REGIONAL REPRESENTATION

THE CANADIAN PARTNERSHIP

A Task Force Report Prepared By
Peter McCormick
Ernest C. Manning
Gordon Gibson

©September 1981

CANADA WEST FOUNDATION

245 West Pallser Square
Calgary, Alberta T2P 1K1
Telephone (403) 264-9535

CANADA WEST FOUNDATION

The Canada West Foundation is an independent, non-partisan research organization registered as a Canadian charitable organization. It is funded by individual memberships, by grants from corporations and institutions, and by grants from the western provincial governments, Yukon and the Northwest Territories. Its main objectives are:

1) to initiate and conduct practical and imaginative research programs regarding the economic and social characteristics and potentials of the west and north;

2) to initiate and conduct informational and educational programs to encourage an appreciation of our Canadian heritage and the future opportunities available to western Canadians.

The Foundation is governed by a Council of 45 members from the west and the north. The Council meets three times a year to review current programs and policies, and to identify and initiate new activities. A small permanent staff is located in Calgary. The President is responsible for general administration and the implementation of the Foundation's policies and programs.

The Foundation seeks to promote public understanding on significant issues which relate to the maintenance and development of a strong and viable western Canada. It publishes impartial research findings in a concise and readable manner. This research is made available to the news media in order to contribute to public understanding of social and economic issues of the day.

Both Foundation staff and outside reviewers are asked to comment upon the topicality, accuracy, and impartiality of manuscripts submitted for publication. The final decision to publish a manuscript rests with the President. Publication of the manuscript indicates it is considered to be a significant contribution to the public discussion of the subject addressed.

Because the Foundation promotes objective and independent research endeavors, the authors are solely responsible for the content in each publication. Conclusions and recommendations should not be identified as the position of the Foundation's council, staff, or financial contributors.

FOREWORD

In recent years many recommendations for constitutional change to federal institutions have been presented to the people of Canada. The national government, several provincial governments, a national task force, and numerous private organizations have put forward proposals that range from suggesting changes in attitude to those advocating a complete revamping of existing government institutions. While differing dramatically on many issues, almost all have a common theme: the need for more meaningful regional representation within our national government.

Since 1977, the Canada West Foundation has produced several reports on constitutional reform and has sponsored public meetings throughout the north and the west. At almost every meeting, and in private conversations, people have suggested that the Foundation examine the merits of establishing an elected senate. This report is, in part, an outgrowth of their concerns.

Rather than examining the advantages and disadvantages of an elected senate in isolation, the task force report presents a comprehensive rationale for better regional representation within Canada's national government and provides an excellent appraisal of existing proposals.

One of the most revealing aspects of this analysis is the observation that there are two basic constitutional reforms needed for Canada: one is stronger regional representation within the national government itself; the other is a mechanism for resolving conflicts between federal and provincial governments. Throughout the book the task force reminds us that senate reform should not be confused with, or substituted for, the need to establish a mechanism to improve federal-provincial relations.

During the course of this project the task force sought and received information and advice from many individuals, elected officials, constitutional experts, and dedicated public servants. The CWF and its sponsors are grateful to all those who assisted the task force by providing information, reviewing early drafts and, most importantly, sharing their expertise and concern for Canada's future.

Even if one does not agree with this report's conclusion and recommendations, the discussion of the advantages and disadvantages of key constitutional proposals will undoubtedly aid the reader's understanding and participation in the development of a workable constitution for Canada.

David K. Elton
September, 1981

ABOUT THE AUTHORS

DR. PETER McCORMICK was born in Alberta, and grew up in the town of Lacombe. He received his B.A. from the University of Alberta, M.A. from the University of Toronto, and Ph.D. from the London School of Economics and Political Science. He has taught at Lakehead University and the University of British Columbia, and is currently Associate Professor and Chairman of the Department of Political Science at the University of Lethbridge. He has published articles and book reviews in the *Canadian Journal of Political Science*, the *Journal of Canadian Studies*, *Political Theory* and *Prairie Forum*; and has co-authored several briefs and monographs for the Canada West Foundation.

HONOURABLE ERNEST C. MANNING retired from the premiership of Alberta in December 1968, concluding an unparalleled political record. He served continuously for 33 years as a Minister of the Crown, and for 25 years as Premier, during which time neither he nor his Government ever suffered an electoral defeat.

Upon retirement from public office, Mr. Manning established his own research and consulting firm, Manning Consultants Limited, and in 1970 was appointed to the Canadian Senate. Mr. Manning has participated in numerous studies and inquiries on matters of national public policy, including *Energy Regulation Study* (1974-76); *Canada's Resources and the National Interest*, (1977); and *A Realistic Perspective of Canadian Confederation* (1977).

Mr. Manning is currently Chairman of the Board of Fluor Canada Limited, and a Director of Stelco Inc., Manufacturers Life Insurance Company, McIntyre Mines Limited, Melcor Developments Ltd., Burns Foods Ltd. and O.P.I. Ltd.

He has been the recipient of a number of honors and awards including Member of the Canadian Privy Council and Companion of the Order of Canada.

GORDON F. GIBSON was born and educated in Vancouver. He attended the University of British Columbia and graduated with honours in mathematics and physics. In 1961 he received an M.B.A. degree (distinction) from Harvard Business School, followed by research work in political science at the London School of Economics.

Prior to entering political life, Gordon Gibson gained experience in the business world and also received recognition as a newspaper columnist, radio commentator and analyst.

He served as special and executive assistant in the Ministries of North-

ern Affairs and National Resources, Indian Affairs and Northern Development, and as executive assistant to the Prime Minister of Canada.

In February 1974 and December 1975, Gordon Gibson won elections in North Vancouver-Capilano and in September 1975, he was elected Leader of the Liberal Party in British Columbia.

In January 1979, Gordon Gibson resigned as M.L.A. and Leader of the Liberal Party in British Columbia to run in the federal elections of 1979 and 1980. He is currently engaged in a number of small businesses in British Columbia and Hawaii.

During his political career in British Columbia, Gordon Gibson took special interest in political institutions. He has made presentations to the Task Force on Canadian Unity, the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada, the Center for International Studies at Harvard and Canada West Foundation conferences, among others.

TABLE OF CONTENTS

Introduction viii
A. Regionalism: The Canadian Dilemma 1
I. Dimensions of Regionalism 3
1. Conditions of Regional Representation 4
2. Why Represent Regions? 6
Regional Groups vs. Other Groups 8
Regionalism and Separatism 9
3. Regional Designations 10
Regions in the B.N.A. Act 11
Linguistic Regions 12
Other Proposals for Regions 14
Provinces as Regions 15
4. Measuring the Need for Regional Representation 17
5. Regionalism: The Broader Setting 20
II. Regional Representation in Canada 23
1. The House of Commons 23
2. The Senate 27
3. The Cabinet 29
4. Political Parties 32
5. Federalism 34
6. Summary 36
B. Current Reform Proposals 39
III. Constitutional Change and Regional Representation 41
IV. Changes to the Distribution of Powers 43
1. "Harmony in Diversity" 44
2. The "Beige Paper" 45
3. British Columbia's Constitutional Proposals 46
4. Devolution: Advantages 47
5. Devolution: Disadvantages 48
6. National Government Responses 49
7. Summary 51
V. House of Commons Reform 53
1. Electoral Reforms 53
Electoral Reform: Advantages 56
Electoral Reform: Disadvantages 56
2. Procedural Reforms 58
Votes of Confidence 59
Modifying the Committee System 62
3. Summary 64
VI. Proposals for Intergovernmental Institutions 66
1. The Council of Provinces Model 67
Basis for Representation 68
Voting Strength 70
Composition of Provincial Delegations 72
Powers of the Council of Provinces 74
The Council of Provinces and Party Politics 75
Procedural Dimensions of the Council of Provinces ... 78

Council of Provinces: Advantages 79
Council of Provinces: Disadvantages 80
2. The Federal Council 83
Membership 84
Powers 85
Operations and Procedures 86
Partisan Dimensions of the Federal Council 86
Advantages 87
Disadvantages 88
3. Institutionalizing the First Ministers Conferences 89
Details of the Proposal 89
Advantages 91
Disadvantages 92
VII. Senate Reform 94
1. The House of Federation 95
Basis for Representation 95
Memberships of the House of Federation 96
Powers of the House of Federation 96
The House of Federation and Party Politics 97
Advantages of the House of Federation 98
Disadvantages of the House of Federation 99
2. An Elected Senate 100
C. An Elected Senate for Canada 103
VIII. Review and Recommendations 105
1. Review 105
2. Recommendations and Rationale 108
3. Conclusion 133
IX. Summary List of Recommendations 137

List of Tables

Table 1-1: Concentration of Population in Six Federal Systems ... 19
Table 1-2: Canada: Concentration of Population 19
Table 2-1: Representation in Parliament by Province 28
Table 3-1: Issues Addressed by Major Reform Proposals 41
Table 6-1: Intergovernmental Institutions Proposals: A Comparison 71
Table 6-2: Provincial Potential for Delegations 73
Table 6-3: Provincial Administrations by Party, 1945-80 76
Table 6-4: Composition, Council of Provinces 77
Table 8-1: Composition, Elected Senate (10 per prov.) 130
Table 8-2: Composition, Elected Senate (6 per prov.) 130
Table A-1: Comparison, Smallest Unit in Federal Systems 141
Table B-1: Concentration of Population, Selected Countries 155
Table C-1: Party Composition of an Elected Senate 164
Table C-2: Comparison of Proposals for an Elected Senate 167

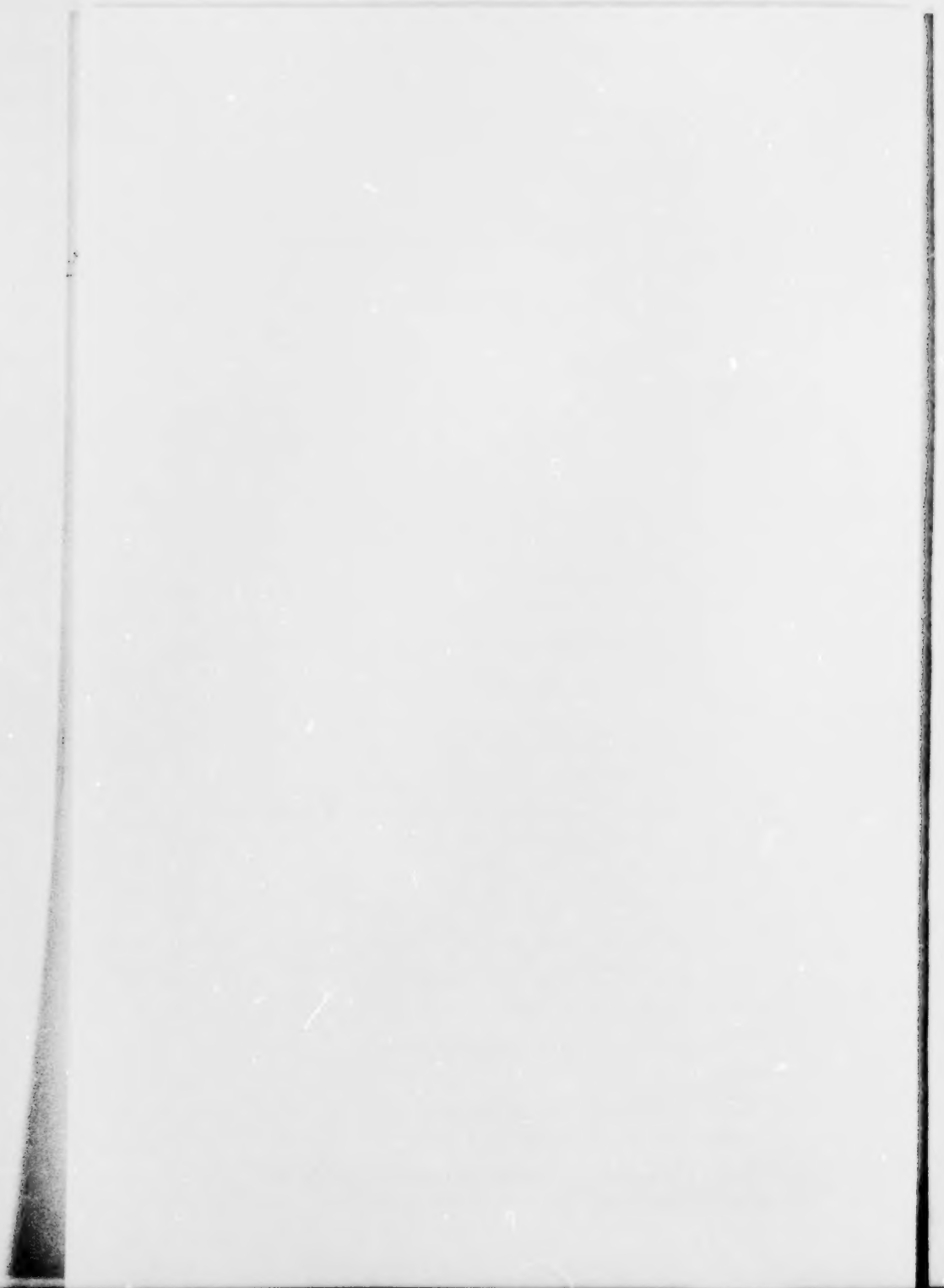
List of Figures

Figure 1-1: Distribution of Population by Province 18

Appendices

A. Political Scarecrows 141
B. Measures of Population Concentration 155
C. Other Proposals for an Elected Senate 161

Sources 169
Canada West Foundation Publications on Constitutional Issues. 171
Membership Information 172



INTRODUCTION

The reality of Canadian politics has always been *regionalism*. Never has this been more true, and more obviously true, than in the decade of the 1980s on which Canadians have just embarked. The politics of the 1980s, in energy policy, constitutional change and national general elections alike, reflects the heightened salience of regional identity and regional differences.

Yet the capacity of the institutions of our national government to accommodate these regional differences and demands has never been lower. The politics of confrontation, not the politics of accommodation, prevails, and is reinforced by persisting and accelerating political tendencies. Our major national parties have ceased to be national in their parliamentary representation, a failure which turns party political disputations in the House of Commons into dramatic regional confrontations, and undermines the effectiveness of that great Canadian makeshift, the regionally representative Cabinet. The Senate, never a satisfactory mechanism for the articulation or protection of regional concerns, has been pressed into emergency service, a stop-gap expedient that satisfies no one and is only cosmetically effective.

The increasing irrelevance of the institutions of national government to the accommodation and political expression of regional preoccupations and priorities has forced the provincial premiers into roles which the British North America Act never contemplated and which no institutionalized structure exists to regularize. The fervor of these regional champions is matched only by the firmness of a national government which refuses to countenance the legitimacy of their intervention into matters of national policy. This polarization has claimed as its symbolic victim the Liberal party in provincial politics, now excluded from provincial government office in every province for the first time since Confederation. In more practical terms, the real victims are the people of Canada, increasingly obliged to *choose* between national and provincial identities that federal political theory presupposes as existing in a stable (although not frictionless) equilibrium.

In a sense, none of these problems are new. Quebec nationalism, Western discontent, resentment in the Maritimes, and hostility between Premiers and Prime Minister are recurrent features of Canadian politics. But the fact that the patient has always recovered before does not mean that the most recent and serious relapse could not be fatal. Many of these forces are stronger, their expression more virulent, their potential for effective action more real, than has ever been the case before. Quebec separatism has become respectable, formed a provincial government, and captured 40% of the vote in a popular referendum. Western separatism, while not yet a

comparable force, has emerged, formed embryonic political parties, drawn thousands to public rallies, gained the support of MLA's in one province, and now feeds on enduring suspicions and resentments as public opinion in the region polarizes. The sullen resentment of a Maritime region that has always felt victimized by Confederation is fanned by visions of the potential end to "poor cousin" status in a pending resource boom, and aggravated by fears of being cheated of a turn in the sun.

There are two different ways to respond to such regionalizing forces. One is by resistance, and this is the means currently being employed. Reaffirming the role of the national government, mustering a small parliamentary majority based overwhelming in central Canada, forcing the pace by controversial unilateral initiatives, exploiting the letter of the law to undermine the spirit of federalism, all on the rationale that the only alternative is surrender to the forces of balkanization and separatism — this is one alternative.

The second alternative is along the lines of the principles of judo: not to resist the forces, but to go with them, to use them, to redirect them. This would suggest that Canadians should deal with regionalism by accommodating it, by allowing it to flavor and to fine-tune national policy. This would imply that the national government should not seek to pound the regions into submission, but rather should try to bring them into an effective and truly national partnership. The success of such an alternative cannot be guaranteed, and never have our national institutions been less suited to pursuing it.

This we see as the major challenge of constitutional reform in the 1980s. Regionalism is *real*, its influence runs deep, its strength is great. It is far from certain that it can be waited out or subdued, or that there are not grave perils in attempting either tactic. The challenge is to provide for the effective representation of regional concerns within the institutions of the national government, to create a national purpose that accommodates rather than resists the regional identities that have proved so persistent and so important. It is to the question of how to meet this challenge that this task force directs its attention.

Certainly the field of constitutional reform has not stood fallow. During the last decade, many proposals have been made by Canadians regarding the reform of the Canadian constitution. Many of these reports included, and a number centered upon, institutional changes in the national government directed toward facilitating regional representation. These proposals came from a variety of sources: political parties, provincial governments, research foundations, professional associations, academics, and from the national government itself.

The purpose of this report is:

1. to identify the problem, the meaning, and the need for regional representation;

2. to assess the adequacy of existing devices for regional representation in Canada;
3. to summarize and synthesize recommendations concerning regional representation that have been made by participants in the constitutional debate over the past decade;
4. to identify the advantages and disadvantages of the several proposals; and
5. to conclude with a set of recommendations by the authors, informed by the analysis that has taken place in the earlier chapters.

Even for those who are not convinced by our recommendations, this report will serve as a useful resource for those pursuing other solutions.

Regional representation is not the only important dimension of constitutional renewal, nor will reforms of this kind eliminate *all* of our recent problems. At best, a constitution can only be a framework within which people can seek solutions to their problems; it cannot compel them to succeed. But the absence of effective and entrenched instruments for regional representation has been a constitutional defect for which we have paid a significant price, because it has helped to generate the alienation and suspicion that complicates the resolution of controversial issues. The existence of carefully designed institutions for this purpose would make it easier to resolve such conflicts in the future. It is this spirit which informs our analysis and suggestions. The opportunities presented by the process of constitutional change will be wasted if we do not emerge from that process with a set of institutions which better reflect the regional nature of our country, and which promote the development of national policies and programs that serve the needs of all Canadians in all parts of the country.

Three firm considerations guide our discussion, and should be made explicit from the beginning. These are:

1. PRACTICALITY: The intrinsic merits of any proposal must be discounted against their practicality. We will prefer as realistic an option having some chance of adoption by the people and processes which are likely to guide the form of constitutional change in this country. Without allowing such realism to paralyze all imagination, the extent to which any specific proposal has a chance of being adopted is an important criterion in our evaluation.
2. WORKABILITY: The extent to which the experience of Canadian politics, or of similar political systems elsewhere in the world, reduces the unpredictability of the consequences of adopting any one proposal will be counted in its favor. The extent to which we are reduced to guessing about such impact will be counted against it. It is a maxim of comparative politics that a change in any one political institution will force changes and adjustments

in many other institutions in ways which are often difficult to know in advance. It is in this light and for this reason that we will consider how similar institutions have worked in other countries, and count it against a proposal that can show us no such test results of prototypes. The point is not to copy blindly the ideas of other countries, for the uniqueness of Canada is obvious to anyone, but to benefit from their experiences where possible.

3. COMPATIBILITY: proposals must be evaluated in terms of the extent to which they could accommodate prevailing political patterns, rather than requiring a wholesale remaking of structures and attitudes. We will prefer that option which is the most compatible with existing institutions and practices, that creates the fewest dislocations in the process of government. Many institutions and practices of Canadian government have served Canadians well, and they should not be undermined any more than necessary.

It goes without saying that these considerations qualify but do not replace the all-important criterion of *adequacy*. We must design an institution that will work; our concern is that we not pay more for it than we need to.

It is certainly true that this country is going through a major political crisis. It would be unwise to ignore how serious the situation has become, how fragile Confederation has shown itself to be, how strong are the forces that would seek the end of Canada as we know it, how deep are the resentments that run just below the surface in many parts of the country.

But this crisis has also given Canadians a unique opportunity. We are in the process of re-examining what it means to be a country, and what we contemplate as the joint project to which this nation is committed. We are consciously redesigning the institutions by which we are governed, and the procedures that inform them. The Quebec referendum of May 1980 was a serious threat, perhaps the most serious we have known, and the victory of federalism there was both tentative and qualified. Nonetheless, the referendum also provides us with a great reassurance as the majority of Quebeckers opted for a statement of faith in federalism. If the perils are real, so is the potential; if the controversy is clear, so is the concern and the commitment.

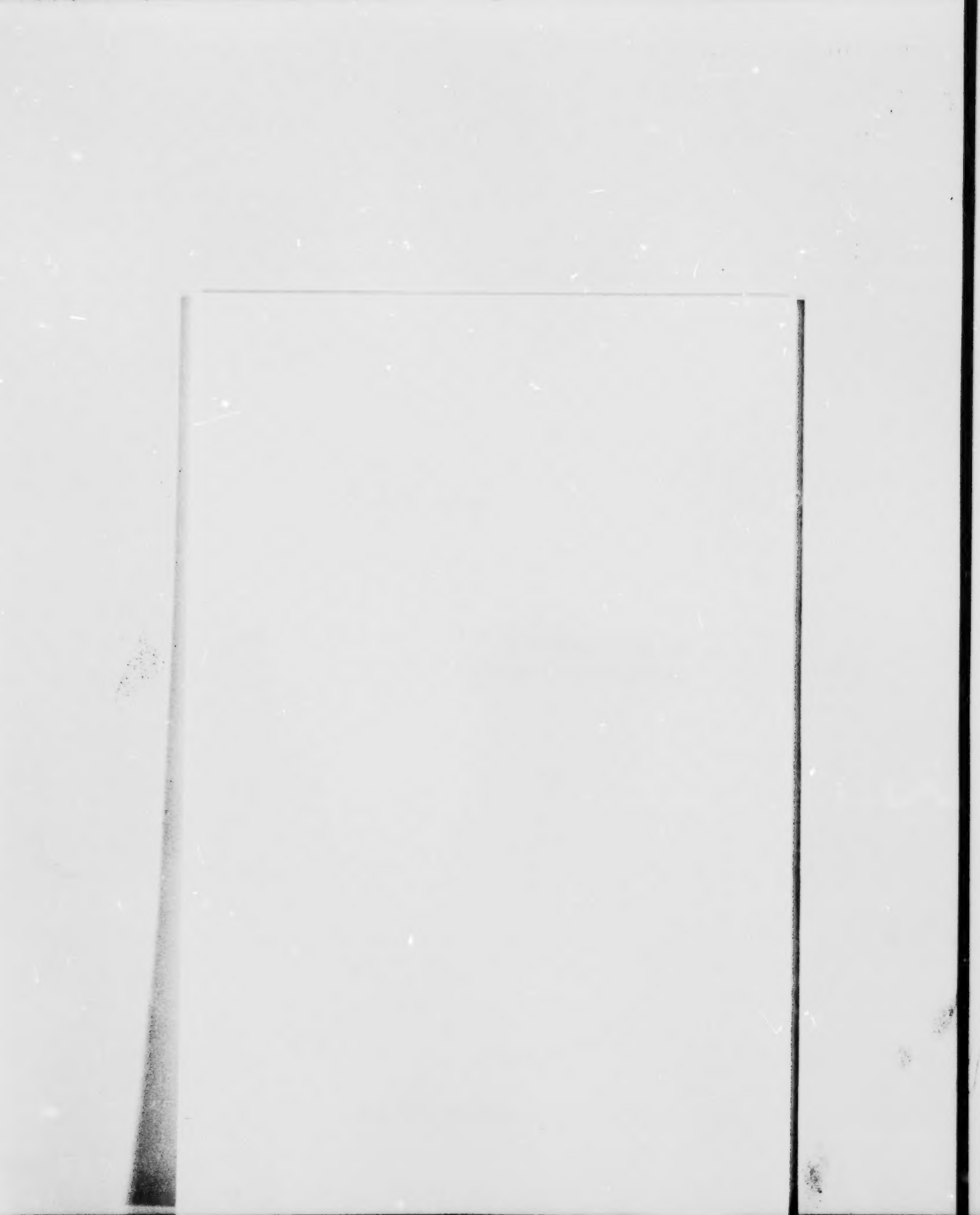
The same doubts and reservations and uncertainties that can be heard today accompanied the drafting of our first constitution, that dry and prosaic document called the British North America Act. Doubt and optimism, vision and realism, are fully appropriate to the political act of starting over.

The authors of a recent history of Canada since 1945 defiantly begin their account with the flat statement that "Canadian history is a success story."[1] Shorn of its overtones of complacency (which we do not believe the

[1]Robert Bothwell, Ian Drummond & John English, *Canada Since 1945: Power, Politics and Provincialism*, (Toronto; University of Toronto Press, 1981), p. 3

authors intended), the sentiment is a useful corrective to the gloom that now so often prevails. Canadians have more to be proud of than they ever seem willing to admit, and more to look forward to than we often realize. This time, Canada can do more than muddle through, more than try to wait the problem out; this time there is an opportuniy to do something new and positive. This analysis and these suggestions are presented in this spirit, as advice to the architects of the new Canadian constitution on how to design at least one corner of the building.

A. REGIONALISM: THE CANADIAN DILEMMA



I. DIMENSIONS OF REGIONALISM

At least one of the significant dimensions of the contemporary Canadian political malaise is the problem of "regional representation", the problem of avoiding a situation where important regions of the country are reduced to the role of spectator in the process of national government. It may be open to question how deeply Quebec voters resented or feared their brief exclusion from the seats of federal power during the Clark interim, but it is unquestionable that many Western Canadians are reacting most bitterly to their more or less permanent "outsider" status under a series of Liberal regimes which have drawn their support predominantly from Central Canada. Part of Canada's political problem is the fact that the inhabitants of some parts of the country recurrently perceive themselves as unrepresented within the national government, and see national policy as failing to reflect their interests, their concerns, their needs. The more significant the policy areas in which this partiality is perceived, the greater the frustration that is generated, and the higher the potential political cost.

It is clear that the representation of all the regions of Canada in the process of national decision-making is *not* being adequately accomplished. We will try to consider this problem constructively by isolating the conditions that must be objectively present for regional representation to be achieved. Further, we will consider the concept of "region", and suggest the appropriate meaning of that term for Canadian politics. Finally, we will distinguish between the underlying objective condition of "regionalism", and the immediate concrete events that act as a catalyst to push this potential toward political articulation and action. This distinction further highlights the need for effective regional representation on a continuing basis.

One underlying conviction must be made clear. "Western alienation", like the other manifestations of Canadian regionalism, is not a transient epiphenomenon of Canadian politics that will go away if we somehow manage to outwait it. Instead, it is the most recent outbreak of a condition that has been chronic in this country since Confederation, not just in the West but in other parts of Canada as well, and all reasonable expectations are that it will continue to be chronic in the future. Underlying conditions of a broad-based nature generate regionalism in Canada; constitutional flaws and deficiencies continually function as catalysts to impel this potential toward overt manifestation. Although any one of these outbursts may be short-lived, the overall pattern is not. Canada has muddled through until now but there is no guarantee that this luck will last indefinitely. Constitutional reform in the

direction of effective regional representation is not merely desirable but necessary, not merely as a grudging concession to transient complaints but as a remedy to recurrent and enduring problems in Canadian national institutions. Such a remedy will provide the opportunity for the better resolution of political problems in the future.

1. CONDITIONS OF REGIONAL REPRESENTATION

We must begin by stipulating the conditions of effective regional representation. We regard this as a package, not as a list of alternatives. These are:

i. There must be within the process of national decision-making specific individuals who represent the particular views, interests and needs of the inhabitants of specific regions. It must be possible, objectively and unambiguously, to designate those individuals who carry the responsibility of representing the people of any specific region (although it is not necessary that they speak with one voice).

ii. These individuals must be perceived as *legitimate* by other participants in the national decision-making apparatus. They must be seen as carrying this responsibility and performing this function, and listened to on this account. When the concern is to elicit the thoughtful response of a region to specific policy alternatives, it must be accepted that these specific individuals have the responsibility to present that response.

iii. These individuals must be perceived as *accountable* by the people whom they are to represent. They must be perceived as responding to indigenous opinion, as being sympathetic and sensitive to local concerns and preoccupations. The purpose of this accountability is to ensure that these individuals represent the interests and concerns of the people of that region, and that this element of representation is not overshadowed by purely partisan concerns.

iv. These individuals must be given special power (i.e., importance, weight or influence) to reflect their status as regional representatives. Some instrumentality must exist within the decision-making structures to acknowledge and respond to the special salience of regionally based concerns.

v. These individuals must be at least minimally effective in achieving a degree of sensitivity to regional concerns in the development and application of national policy.

vi. These conditions must not be merely accidental or occasional, or dependent upon the presence of specific personalities, but constitutionally entrenched and guaranteed; regional representation must come, not from happenstance, but from the normal operation of specifically designed national institutions.

We deliberately intend this stipulated set of requirements to go beyond the conventional vague utterances of a need for "regional input". Given the variety of channels of political communication, and the newsworthiness of major rallies or demonstrations, it is most unlikely that national decision-

makers have failed to become aware of Western discontent. Nor could anyone who watches the national news, listens to the radio, or glances at a newspaper fail to be aware of the opposition emanating from a particular region to such programs as the National Energy Program. In this sense and to this extent, "regional input" has been achieved. It is far less clear, however, that anything has happened as a result of this communication, or that any changes have come about because of it.

In the modern era, with overloaded channels of communication and the information explosion, it is no mean feat in itself to "get the ear of the king", but this of itself is never enough. The point is to get the king to do (or to stop doing) something specific in areas of real concern. It is the persistent perception that the message is either not getting through or not being heeded, that generates popular feelings of intense frustration. When "regional alienation" surfaces as an urgent problem in one part of the country, it is because the channels for the effective political brokerage of regionally specific views and grievances do not exist. When this happens, it is the political structure itself which is aggravating, or even creating, the problem by reason of its own inadequacies. Our national institutions should be part of the solution, not part of the problem, and this conviction must define the parameters of constitutional reform.

A regional *voice* cannot be separated from regional *power*. The people of a region are unlikely to feel represented in any effective sense unless they get their way, at least some of the time and at least on those things most important to them. It is the sense that the things we want are being done, and they are being done because we asked for them, that constitutes the ideal achievement of "regional representation".

It is obviously unrealistic for any one group of people (regionally defined or otherwise) to expect to get everything they ask for. It is patently inane to expect quick government response to those matters that we ourselves concede are not very important to us. Within the broad limits defined by these two extremes, however, it is impossible to separate a sense of a region being effectively represented from a perception of national responsiveness.

To some extent, this seems to generate a no-win situation, because by definition not every region can have its own way on everything when the interests or demands of the various regions differ. We would seem to have specified the conditions of regional representation only at the very real cost of making them unachievable. On a dramatic and rather superficial level, this is the problem that seems to be presented so graphically by the last two national general elections; if the Tories win, then Quebec residents are shut out from the seats of national power, while if the Liberals win, Westerners sit by as observers. If one region wins, then another region loses.

Things may have reached this state. It may be the case that the interests and preferences of the inhabitants of the various regions of Canada are now so much at variance that no compromise is possible, and the only question

left to be asked is which region is to have its way. This point of view is a virtual abdication of any future for Canada, as it concedes in advance that no answer can be achieved without clear losers or by any means other than power politics. It is really the argument put forward by separatists, whatever end of the country they might be speaking from and in whichever official language. A more constructive approach is to realize that we are not well-served by a set of political institutions that currently makes no formal provision for the resolution of regional grievances, and recurrently generates graphic impressions of irreconcilable regional opposition.

Our national governmental institutions are more suited to a "politics of confrontation" than to the "politics of accommodation" more appropriate to the pressures of a federal country. Part of this can be attributed to the centralization of power inherent in the logic of the parliamentary system, but it has been aggravated by a failure to build any effective offsetting institutions. In such a context of confrontation it may well seem quixotic to dream of a situation in which regional aspirations can be reconciled with national programs. The challenge, however, is for Canadians not to be restricted to such a narrow context, but to devise more effective national institutions.

2. WHY REPRESENT REGIONS?

The concept of regional representation poses some problems for democrats. For one thing, regions seem, at least at first glance, to be curious units for representation. In the liberal democratic tradition, the stress has been on the representation of *individuals*, and the evolution of Western democracies can be described in terms of the progressive extension of the franchise to larger and larger portions of the population. In recent years, the principle of "one person, one vote" has gained ever greater currency and literal application. The normal units of representation in modern democratic systems are purely arbitrary territories of more or less equal numbers of voters. In this respect, any given "region" of the country or province is "represented" in more or less exact proportion to its voting population, and any departure from this basis for representation is democratically suspect.

Within a federal system, however, a second set of logical dynamics has already been built-in. It has become an academic commonplace to observe that federalism is a political structure best suited to those societies which possess significant diversities organized on a territorial basis.[2] The more a country is possessed, not just of social diversity, but of significantly different groups that occupy different geographical areas, the more it will be necessary to operate the formal governmental structure in a fashion which acknowledges and responds to these diversities. This implies that in a federal system, a

[2]cf. W. S. Livingston, "A Note on the Nature of Federalism", and Michael Stein, "Federal Political Systems and Federal Societies", in J. Peter Meekison (ed.), *Canadian Federalism: Myth or Reality*, (2nd ed.), (Toronto; Methuen, 1971).

majority must mean more than 50% + 1, but rather must comprise a regionally sensitive consensus on a wide variety of crucial issues.

Such an observation is patently relevant to the operation of Canadian politics. The very size and diversity of which Canadians are so proud implies a territorial dimension to our politics. The diversities with which nature has endowed us imply a wide differential in the impact of national policy upon the inhabitants of different regions. The distribution of resources within the country (minerals in the Canadian Shield, fisheries off the east coast, oil and gas in Alberta, huge expanses of good farm land on the prairies, the coal and lumber of British Columbia) generate different patterns of industrial development and occupational opportunities within each region. The legacy of the past, in the form of population concentrations and transportation networks, generate its own dynamic, impacting quite differently in various parts of the country, either supplementing or resisting the implications of the basic resource endowments. Finally, geography in its most basic form exerts further divisive tendencies, such as the "Pacific Rim" orientation of British Columbia, the continentalist tendencies of the Prairies, and the slide toward industrial integration in central Canada. The very existence of Canada can be described as the victory of politics over geography, but it is a victory that has not been purchased easily, nor is it a victory that could ever be total. Geography itself has exacted a number of concessions, the most obvious of which is federalism.

The varying patterns of ethnicity and religion have further complicated this territorial diversity. Quebec is now and always has been the only province where a majority of the population is French-Canadian, and the only province where more than 50% of the population is Catholic. The large Acadian minority in New Brunswick has made the politics of that province unique, while the tangled sectarian controversies of Newfoundland make provincial jurisdiction over education uniquely sensitive even in current constitutional discussions. Manitoba, Saskatchewan and Alberta comprise the only parts of the country in which neither of the two "charter groups" (French and English) constitute an absolute majority of the population. The extent to which these differences have generated differing and even hostile attitudes toward such questions as separate schools or bilingualism has further complicated Canadian politics, and continues to do so today.

These broad objective diversities are enhanced by a variety of "neighborhood effects". Although differences exist within any community, including a regional community, these can be sublimated by a threat from outside the community, especially when this threat can be connected to immediate economic interests. People living within a single community come to share, through interaction, a similar perception of the world and a similar orientation toward politics. The development of communication patterns and information networks in Canada has tended to foster such tendencies, since few Canadians live in anything approaching a communications community ex-

tending beyond a single province. The sole exception would seem to be Ottawa-Hull, a uniqueness that might go far to explain some of the problems in Canadian politics.

One line of argument derives the provincial boundaries within a federal system from pre-existing cultural diversities of a significant nature. Some academics, however, have made the intriguing suggestion that for some provinces, the argument can just as plausibly be reversed.[1] This argument suggests that one of the activities in which provincial governments indulge can be labelled "province building", and aims at the creation of a self-conscious political community defined by provincial boundaries, even if there may have been no such identifiable community before, or even if that community was ill-defined by the lines that divide provinces. The paradigmatic example for such an argument is the province of Saskatchewan, a perfect product of purely arbitrary boundaries if ever there was one. However, if our concern is contemporary Canadians politics, such an argument is really beside the point. It matters not at all whether the regional diversities that now differentiate the provinces pre-date or post-date the creation of those provinces (with the only answer being that it depends what provinces you are looking at). The point is that these provincial communities now exist as a real factor in Canadian politics, and must be acknowledged as such.

REGIONAL GROUPS VS. OTHER GROUPS

Obviously, territorial cleavages are not the only dimension of political conflict, in Canada or in any other country, nor is the regional component of political identity the only one that is politically significant. It has been suggested that the politics of faction and region within Canada has served, either intentionally or unintentionally, to divert attention away from more pressing areas of political differences, direct attention to which would lead to quite a different style of politics. Certainly, the regionalist "geography is destiny" has no more to recommend it than the sexist "biology is destiny".

However, built into the presence of such persistent and deep-seated regional diversity is the existence of regional majorities who regard with some apprehension the operation of national majorities that may not include them or understand them. These regional majorities will seek their own spokesmen (it is one of the outcomes of our deficient national institutions that they tend to find these in the persons of provincial premiers) to articulate their concerns in the face of national activities that are perceived as threatening.

The other face of majority rule in liberal democratic theory has always been minority rights, and it is in this context that an opposition to a majority need not always be seen to be illegitimate. Majority rule is desirable only in a

---

[1] the classic argument is in Edmund Black and Alan C. Cairns, "A Different Perspective on Canadian Federalism" *Canadian Public Administration*, Vol.IX no. 1 (March, 1966); cf. Richard Simeon, "Regionalism and Canadian Political Institutions" in *Queen's Quarterly*, Vol.82 (Winter, 1975).

set of governmental structures that ensures adequate sensitivity to the concerns of minorities; and it is the defining characteristic of federal systems that some of these national minorities whose interests require special attention comprise regional majorities.

Representation by population is a laudable goal, and its realization in the House of Commons is eminently desirable. However, that principle and that chamber provide only one aspect of the degree of representation that is necessary in a federal system. The second aspect, one that recognizes the fact that individuals are also members of regional communities and identify with them, is regional representation.

In a federal system, there is something special about a particular segment of the national population that constitutes a provincial population, that is not the case for a numerically identical segment of the national population that constitutes only a part of the population of another province. In general, in a federation individuals have political significance according to their *territories* as well as their *numbers*. There may be as many people in Toronto as there are in British Columbia, but the people in British Columbia have a special status lacking those in Toronto. This special dimension need not be overdone (for example, in a national election, the bloc of seats from British Columbia in the House of Commons is *not* more special than the bloc from Toronto), but it must be acknowledged. In this sense and to this extent, a special type of regionalism that recognizes political/territorial regions called "provinces" should be built into a federal system, and only constitutional ineptness could leave this regionalism without formal recognition in national institutions.

None of this is to deny the very valuable implications of political liberalism and its focus on the individual, or to deny the political equality of all citizens. The point must be that representation by population provides only one dimension of representation for individuals, albeit a very important one. In any federal system (and arguably in any system, federal or otherwise, exhibiting significant and persistent diversities organized on a territorial basis), this dimension of representation must be supplemented by a second which recognizes the regional aspects of the impact of national policies. Not simple majoritarianism, but a regionally sensitive consensus, must lie behind effective national action on many issues.

REGIONALISM AND SEPARATISM

The politics of regionalism has one further potential which should not be understated in the present context of Canadian politics. There are many actual or potential cleavages that run through the political and social structure of any social system, and the relative salience of these various alternatives will vary from time to time. However, the particular feature of territorially based cleavages, which is of persisting importance, is that it possesses one alternative solution that is not available to other cleavages —

the logical possibility of physical separation or independence. For any regionally based conflict it is possible to devise lines on a map which will put "us" on one side and "them" on the other. The political and economic implications may be considerable, in the end so much so as to prove a practical deterrent, but the logical possibility exists and in times of stress may prove extremely tempting.

This is not to suggest that all territorial cleavages necessarily tend toward separatism. Nor is it to suggest that other cleavages cannot have destabilizing tendencies of comparable magnitude. However, the fact that the debate over separation of one kind or another has dominated the concerns of national politics for more than a decade testifies to the explosive implications of regionalism. If regionalism is the problem, then effective regional representation is a possible solution short of the division into separate and autonomous political units that otherwise presents itself as a logical alternative.

One point that should be faced squarely is that the rhetoric of national unity should not be pushed too far. In an age of self-determination and democratic self-government, it can never be illegitimate for a group of people to consider the possible costs and benefits of reorganization into a smaller nation state. Our perpetual inferiority complex vis-a-vis our huge southern neighbor should not blind us to the fact that many countries much smaller in area and population than Canada exist and prosper, nor is there any strong correlation between size and economic well-being. It may or may not be the case that separation and independence for any part of Canada are undesirable, and that the gains would not off-set the costs, but it remains legitimate to raise the possibility that any one region might be so ill-served by Confederation as to benefit from leaving. An effective system of regional representation, perceived so by the inhabitants of all regions, would go far toward ensuring that such a debate would always be resolved in favor of Canada.

3. REGIONAL DESIGNATIONS

Canada, like any other country, is composed of a bewildering variety of political, economic, geographic, climatic, cultural and linguistic regions. There is no ultimate single criterion, and it follows that there can be no single set of territories that exhaustively describes the significant features of any political unit. Indeed, the allocation of criteria for the demarcation of regional boundaries is completely arbitrary, and the analyst may distinguish as many different regions of as many different types as seems appropriate or relevant, and there is no absolute sense in which any one set of such boundaries is preemptive or "true".

One logical and easily applicable way of devising regions for the purposes of Canadian politics is to use those regions that already have political existence under the label of "province". Such an approach is all but axiomatic in the general texts on federalism, and the principle of the sov-

ereign equality of provinces (under their various names) is the most common solution adopted in most contemporary federal systems. It is, however, a solution that has been firmly resisted in Canadian politics, avoided by a series of stratagems that would be amusing in their superficial arbitrariness had they not become so firmly entrenched in Canadian political idiom.

REGIONS IN THE B.N.A. ACT

The first way of dividing Canada into political regions is to use the logic that is already embodied in the Canadian constitution. In Section 22 of the amended British North America Act, a token bow to federalism was made by declaring that:

> In relation to the Constitution of the Senate Canada shall be deemed to consist of Four Divisions: 1. Ontario; 2. Quebec; 3. The Maritime Provinces, Nova Scotia and New Brunswick and Prince Edward Island; 4. The Western Provinces of Manitoba, British Columbia, Saskatchewan and Alberta; which Four Divisions shall (subject to the Provisions of this Act) be equally represented in the Senate
>
> . . .

It seems conventional now to add Newfoundland to the Maritime division, avoiding the embarrassment of having a single province of the ten that does not belong to any region at all. However, there are problems in this. For one thing, Newfoundland is not a Maritime province at all, lying outside the historical associations and interconnections that generated this term. Until 1949, Newfoundland stood completely outside Canada and Canadian politics, its political and commercial attachments being primarily to the United Kingdom and to the United States. In this sense, the "tacked on" nature of Newfoundland's Senate representation is perfectly appropriate and descriptive. Only by neglecting history, logic, and present political trends can we lump Newfoundland in with the three Maritime provinces.[4]

The attempt to escape this argument by renaming the new four-province Division as the Atlantic provinces (as has been done in the current constitutional resolution regarding an amending procedure) is equally arbitrary and unsatisfactory. What we really mean by this Division, however designated, is "the four little provinces on the east", and the point of describing them as a Division is to imply that in some politically crucial sense it takes all four of them to equal one of the two central provinces.

The Division comprised of the western provinces fares little better. The fundamental problem, and one that is clear to any geographer, is that British Columbia is quite unlike any of the Prairie provinces. If the Rocky Mountain

[4]Even for those three, the redundancy of their political boundaries is more apparent to those viewing it from a distance than to those who live within them. The discussion of Maritime Union predates Confederation itself, but seems no closer to achievement now than it stood a century ago; this being the case, the mere fact of a close degree of historical association is insufficient to suggest a blurring of the very real, solid and durable provincial boundaries.

range does not constitute a natural barrier sufficient to divide one region from another, it is difficult to think what would qualify. Its amalgamation with the three Prairie provinces to form a single Division was an arbitrary action, generated by convenience rather than by logic so as to stray as little as possible from the principles of representation by population while paying lip service to the idea of representing regions.

Lumping the three Prairie provinces together as a single unit is also dubious. The resource base of the three provinces is quite different, so their industrial base and the direction of their future development is similarly different. The political behavior of the three provinces is diverse; only the lack of direct knowledge of the area could have prevented one from enjoying the unintentional humor of eastern press attempts, during the 1978 Constitutional Conference, to paint Lougheed and Blakeney as the Bobbsey Twins of resource rights. The similarity in economic and cultural conditions that once generated a meaningful multi-province Prairie region have steadily eroded; the unity of the wheat economy (so real fifty years ago) is no longer a factor, and although agriculture remains very important to all three provinces, it is agriculture of distinctly different sorts. The attempt to merge into a single convenient region the diverse interests of Manitoba, Saskatchewan and Alberta is an attempt to escape the obvious.

What is the logic for reducing these three to such second class status? Again, it seems to be population. The straightforward translation of a Prairie (or Western) Division is "the three (or four) little provinces West of Ontario", and the principal implication of so combining them is to suggest that in some important sense it takes all three (or four) of them to equal in importance either of the two central provinces.

LINGUISTIC REGIONS

There is a second approach to regionalization based on factors not primarily geographical that seems recurrently popular, especially in central Canada. This view would divide Canada into a "French Canada" and an "English Canada", identifying these as the crucial and preemptive diversities requiring special consideration and representation.

French Canada in these terms would seem fairly straightforward. It would include all Francophone Canadians. Territorial limits can be suggested for such a territory. At its most generous, it would include the territory north of the "Soo-Moncton" line that has been identified by Richard J. Joy[5] connecting the city of Moncton with the city of Sault Ste. Marie. Only scattered groups of Francophones, and those subject to strong assimilationist pressures, exist outside this area. Logically, the principal spokesman for French Canada must be the government of the province of Quebec, the only Francophone majority government in Canada. The tendency of this region for political purposes

[5] *Languages in Conflict*, (Toronto; McClelland & Stewart, 1972).

to collapse back upon the boundaries of Quebec is indicated by the popular self-relabelling of "Canadiens" as "Quebecois" in recent years, and the French-only policies of the present Quebec government. Save for the ambiguities created by the existence of the "Francophones hors du Quebec" (who resist such a redefinition), and the English-speaking minority within Quebec, the entity of French Canada seems identifiable and plausible.

The label "English Canada" would include the rather polyglot remainder of diverse origins that tends to use English for its day-to-day activities. It is much more difficult to devise a way in which this entity is to be organized for political purposes. The national government is not a satisfactory option; in such schemes, it is an overarching and reconciling mechanism, standing (either as is or with structural reforms) above both linguistic communities. Neither is it satisfactory to have nine different governments speaking for this single entity. This leaves one with only two logical alternatives. The first is to suggest that the largest and most predominant of the Anglophone provinces is the spokesman for this second linguistic community; the second is to suggest that provincial boundaries other than those isolating Francophone Canada/Quebec are redundant and unnecessary, or at least less real and significant than the boundaries that separate the linguistic communities.

This is simply the latest form of one of Canada's enduring political myths: the notion that the only reason that there is any need for this country to be federal is the existence of the province of Quebec with its Francophone majority. This myth is based upon a particle of truth — namely the fact that Confederation was born out of the political deadlock that resulted from the attempt to combine Upper and Lower Canada within a single unitary political entity. But if Quebec remains in some sense the logical successor to Lower Canada, the logical successor to Upper Canada is the province of Ontario and *not* all the rest of the country. The Canada of 1867 is not the Canada of 1981; the problems that led to the creation of this country are not identical with those that demand attention today.

It is tempting to assume that because French Canada constitutes (or, more properly, contains) a single entity organized for political action, the same must be true of English Canada. This is, however, a very basic philosophical fallacy. English Canada is not an entity, but a residuum generated by removing French Canada; it is not organized as a single unit for political action, least of all under the tutelage of the government of Ontario. The reality of Canada today is ten provinces as much as it is two peoples.

The myth of linguistic regionalism is the most dangerous myth in Canadian politics, and one that carries in its train two implications with extremely dangerous overtones. On the one hand, such a conceptualization concedes in advance the uniqueness and distinctiveness of Francophone Quebec, and sets it permanently apart from the other political units of Canada. On the other hand, it defines out of existence the grievances and concerns that grow out of political territories less inclusive than the arbitrary

and polyglot "English Canada", subsuming under the medium of language all the other problems that preoccupy Canadians today.

If there is one factor that threatens the future of Canada, it is the attitude of Central Canadian pundits and politicians with their Ontario-centered view of Canadian history and politics. The Parliament Buildings in Ottawa stand on the edge of Ontario and gaze over the river at Quebec. This description can become all too symbolic of a vision of Canada that stretches all the way from the University of *Western* Ontario to the *Eastern* Townships.

The problems of regional representation in Canada go far beyond the "Quebec problem". Canada consists of many regions, and all must be included in the formation of national policy if national unity is to be more than a slogan masking domination by only a part of the country. That one geographical region is also culturally distinct complicates the problem, but it does not preempt the search for a solution.

OTHER PROPOSALS FOR REGIONS

Logically, we might infer from the Divisions of the BNA Act, the regions of the national government's recent constitutional proposals, and the implications of the artificial dichotomy of French/English Canada that the political articulation of regions for Canada can be freed from the arbitrary limitations of existing provincial boundaries. The field is open to the imagination, and a wide variety of possibilities emerge, none of which has been adequately conceptualized or explored.

Indeed, the most geographically dubious of the conventional regional divisions is the one that is most taken for granted. Geographically, there is little to divide Ontario from Quebec apart from the convenience of a river. (If every river in Canada served as a regional boundary, we would have too many regions to count.) To the geographer, if not always to the political scientist or the historian, the St. Lawrence river valley forms a single region, bound by the most objective criteria imaginable. How strange that neither the BNA Act nor any of the constitutional proposals for amending procedures lump Quebec and Ontario into a single region — strange, that is, if we are supposedly using purely geographical criteria for the breakdown of regions.

If some supposed regions collapse into one by geographical criteria, others break down into multiple regions. Within Quebec and Ontario, for example, the logical division (on any save linguistic lines) is north vs. south rather than east vs. west. This would certainly come as no surprise to the inhabitants of northern Ontario. It has been suggested[4] that the northern regions of every province from Quebec on west form an under-represented and neglected region that has little in common with the heavily populated and therefore heavily serviced southern portions of each province. This

[4]Louis-Edmond Hamelin (tr. William Barr), *Canadian Nordicity: It's Your North, Too*, (Montreal; Harvest Press, 1979).

suggests a much more revolutionary scheme of regional representation than any heretofore suggested, namely equal representation between the long thin strip of populated territory that hugs the U.S. border, and the vast hinterland to the north of this belt. This might yield quite a different impetus to Canadian politics.

The most obvious sense in which the country divides into geographical districts would yield a very small and discrete number of units. We would have perhaps only three units: the province of Prince Edward Island, the province of Newfoundland (less Labrador), and mainland Canada. (We could increase the number of units by adding Cape Breton Island, Vancouver Island, and the numerous islands of the Northwest Territories, but why belabor the point?) At least the logic of this division would be obvious rather than arbitrary, and the boundaries could be unambiguously determined by anyone who did not mind getting his feet wet.

One could suggest further possibilities. On the grounds that anyone can tell a mountain from a valley, we could divide Canada into regions on the basis of the height above sea level of any given location. Or, given the stresses and strains generated by urbanization, we could lump as three separate regions the major urban areas, the minor urban areas, and the rural parts of country. These are only a few of the possibilities that present themselves if we are not to be limited by the accident of provincial boundaries in the devising of new regions.

The point need not be overdrawn. It should be obvious that if the boundaries of any province, be it Prince Edward Island or Saskatchewan, have no importance in the designation of regions deserving representation, then the boundaries of no province can be considered sacred. Whether it is a matter of combining provinces into multi-province regions, or breaking provinces down into intra-provincial regions, once the process has started there is no logical stopping point.

PROVINCES AS REGIONS

The solution seems obvious, however strange at first glance to majoritarian democrats. The most logical regions for Canadian political purposes are those regions uniquely contained within provincial boundaries. This is already the logic implied by most standard texts when they speak in general terms about federalism, distinguishing between national and regional governments. Only in Canada do we confuse the issue by suggesting that some provincial governments constitute regional governments, and other provincial governments do not. The present government of Canada has rejected the principle of special status, which would imply that some provinces enjoy rights or powers not extended to other provinces. However, this principled resolution does not extend to regional representation or to constitutional amendments, for which purpose multiple classes of provinces seem perfectly acceptable. This is a curiously discriminating application of the principle of

the equality of all member units that is more common in contemporary federal systems.

The *reductio ad absurdum* of this sort of suggestion is always held to be the illogic of rendering Prince Edward Island as somehow equal to Ontario (although the similar Nevada/California and Tasmania/Victoria and Uri/Zurich pairings seem much less disturbing to other federal nations). It is frequently suggested that Prince Edward Island with its 120,000 people[7] is too small — but too small for what? The smallest state in India (a country of rather greater total population) is Sikkim with just over double the population of P.E.I.; far from being an anachronistic carry-over, Sikkim is the newest unit of that country to gain full statehood. The smallest state in Australia is Tasmania, with 400,000+; the smallest state in the United States is Alaska, with barely 300,000. In Switzerland, the smallest canton is Uri, with 34,000 people. All are full members of their respective federations.

If the problem is that Prince Edward Island should not be a province, then it should be tackled directly, rather than by allowing a kind of guilt by association to justify unequal treatment of other provinces whose population disparity is much less glaring. (The premise may be that P.E.I. cannot equal Ontario, but the conclusion always is that British Columbia or Alberta cannot be given the same Senate representation, or the same status in constitutional amendment, as Quebec or Ontario.) Perhaps we could attack the problem from the reverse angle. If the "P.E.I. is too small" argument is really a reverse way of saying that Ontario is too much bigger than the island province for the two to be treated as equals, one could give Ontario (and Quebec) the constitutional option of breaking themselves into several smaller units, each one of which would have full provincial status.[8]

The most practicable approach is to leave provincial boundaries where they are, warts and all. It is of course true that the fit between province and objective region is not perfect. At least two provinces are so large that they might convincingly be suggested as containing several regions. British Columbia, with the endemic remoteness between the lower mainland and the interior, might qualify for similar consideration. As well, some existing provincial boundaries do not necessarily run in the most useful places. Examples might include the British Columbia-Alberta border, and the Manitoba-Ontario border. Undoubtedly, given a free hand, one could devise rational and workable borders quite different from those that currently divide the map of Canada into differently colored sections. However, the politics of breaking up existing provinces and of shifting existing boundaries is likely to

---

[7]figures from 1976 census.

[8]We could call this the "Texas option", to indicate the historical parallel to the state of Texas, which was given the option of dividing itself into no more than four separate states when it entered the Union. See Roy Allan Billington, *Westward Expansion*, (3rd ed.) (New York; Macmillan, 1969), p.505.

prove at least as intractable as the politics of combining provinces, and the history of Maritime Union is most instructive in appraising these possibilities.

A great deal of time and effort is being spent to avoid the logic that seems so straightforward to other federations: each province/state constitutes a regional unit and is entitled to special representation for that reason. In contrast to other regional divisions, province-regions have concrete historical and political existence; they correspond to one set of institutions and processes that have real existence and meaning in the lives of most citizens. Their boundaries are unambiguous and their inhabitants easily recognizable. The logic of federalism, with its requirement for a regionally sensitive consensus in many critical areas of national decision making, is not realized in the institutions of national government in Canada, and perhaps neither understood nor accepted by many of the people who fill responsible positions. Instead, the logic of majority rule dominates the structure and the actions of the national government. The present Canadian political malaise is one outcome of this tendency, and it can be countered only by the creation of more appropriate national institutions.

4. MEASURING THE NEED FOR REGIONAL REPRESENTATION

There are many dimensions or levels of regionalism. One is straightforwardly geographic, and would relate to factors like natural resources, climate, communication and transportation links, and the like. A second is demographic and would include factors like ethnicity, language, occupational distribution, and the like. A third, more subjective in nature, would refer to regional self-identification, differences in political cultures and attitudes, as well as the current identification of significant political issues. All these are significant, all are relevant to Canadian politics, and all are capable recurrently of generating considerable regional strains on the Canadian political fabric.

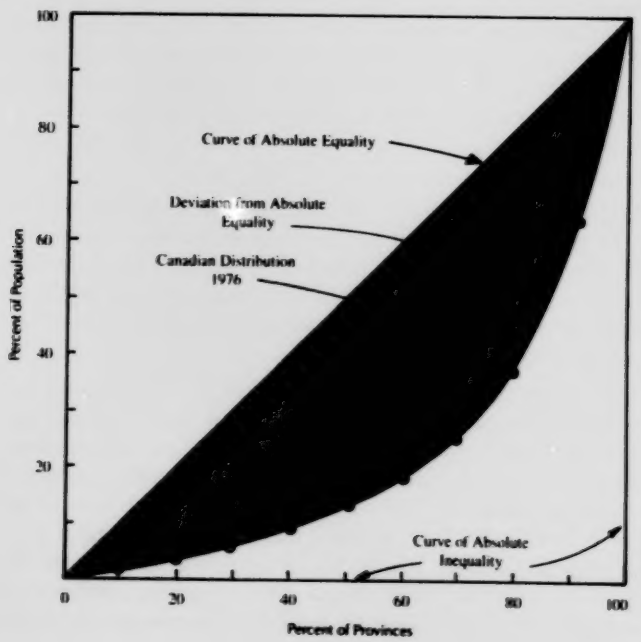
However, underlying and aggravating these dimensions is the question of the distribution of population among regional units — the question of the relative size of the provinces. As a general axiom: the more the distribution of population in a federal system departs from equal distribution, the greater the need for special instruments for the articulation and protection of regional concerns.

We do not imply that a federal country in which the population is equally distributed between all provinces would have no need for effective regional representation, or for special regionally-sensitive procedures in national policy-making, or for "double majority" or unusual majority provisions in some issues. If Quebec was only 10% of the total population of Canada, instead of 25%, its special concerns would remain important, and institutional guarantees would be, if anything, even more important. However, unequal distribution of population aggravates and exacerbates the regional differences generated by the other dimensions of regionalism. A

measure of the inequality of the distribution of population among the provinces is at the same time a measure of how easy it is for a regional majority to be overridden by a national majority, and (equally to the point) how likely it is that a specific province will repeatedly form part of that national majority. It is therefore one measure of how real is the danger that national politics will take the form of a national majority confronting a dissident regional majority. It is in this sense that an adequate measure of population concentration will be one indication of the need for guarantees to the inhabitants of the less populous regions that their interests will not simply be neglected or ignored.

The question is how best to measure this concentration of population. A number of measures can be used, and these are considered in Appendix B. However, for reasons that are given in that section, the most objective and straightforward technique is the use of the measure that we will call the Population Concentration Index (P.C.I.). This number is calculated on the basis of a Lorenz Curve, on which a straight line rising from the lower left to the upper right corner represents a condition of perfect equality of distribution (each unit having the same population) and receives a concentration score of 0. For any other distribution of population, measuring the area between the curve and the straight line will generate a measure of the degree of departure from this ideal situation.

Figure 1-1 **Distribution of Population by Province**



The population concentration index suggests that of the federal systems compared, in Table 1-1, Canada has the most concentrated population; slightly more concentrated than the United States, and significantly more concentrated than any of the others. Nor is this degree of concentration showing any signs of decreasing. This is true even though the population of Canada and its distribution has undergone many changes since Confederation. The trend toward greater concentration of population has survived all these changes.

Table 1-1: Concentration of Population in Six Federal Systems

Country	Provinces	Ratio between largest & smallest	P.C.I.
Australia*	6	11.86	17.35
India*	22	431.44	21.70
W. Germany*	10	22.66	22.37
Switzerland	22**	32.72	23.85
United States*	50	65.47	25.65
Canada*	10	69.31	27.29

Notes: *excludes territories; total population figures adjusted accordingly
**"half-cantons" combined by pairs into cantons as per Swiss census data

Table 1-2: Canada: Concentration of Population

Year	Provinces	Ratio, largest to smallest	P.C.I.
1867	4	5.54	23.68
1871	5	64.11	23.34
1881	6	30.86	26.06
1891	6	19.41	25.64
1901	6	21.17	24.61
1911	9	27.03	23.23
1921	9	33.10	22.90
1931	9	38.95	23.19
1941	9	39.72	23.33
1951	10	46.97	25.23
1956	10	54.32	25.78
1961	10	60.11	26.30
1966	10	64.54	26.81
1971	10	68.85	27.23
1976	10	69.31	27.29

In Table 1-2, the P.C.I. bottoms out at a score of 22.90 in 1921, and rises steadily from that point, with the rate of increase becoming dramatic from 1941. The recent and much discussed growth of the Western provinces of Canada has not yet succeeded in even beginning to reverse this long-term trend, although in 1976 the rate of increase in population concentration was the smallest it had been for 35 years. Population distribution patterns in Canada have been becoming steadily more concentrated, with the rate decreasing in recent years but not yet showing any signs of reversal. To the extent that the need for regional representation can be logically linked with

the distribution of population among regions, the P.C.I. demonstrates that Canada has a greater need than other federal countries for effective instrumentalities of regional representation.

5. REGIONALISM: THE BROADER SETTING

Regionalism is a function of a territorially based diversity that achieves significant political articulation over a period of time. In the Canadian context, the most practical application of the concept of region is to take *provinces* as *regions*. No alternative possesses greater merit *unless* what is intended is a massive redrafting of provincial boundaries at considerable political expense, or *unless* the desire is to retreat to some approximation of "representation by population", thereby negating regionalism.

The subjective dimension of regionalism is extremely important; a region must recognize itself to be a region before it can begin to act like one. This subjective dimension has taken on particular significance with regard to the cultural dimension of regional self-perception, with some implications that are both curious and significant.

On the one hand, it has been a long-observed trend that the tendency of modernization and industrialization is toward cultural homogeneity, characterized by an increasing degree of similarity not only within but between countries undergoing this modernization. Regional and sub-regional peculiarities of speech or custom recede before the levelling impact of improved transportation, large-scale communication networks, and increased individual mobility. The spread of nation-wide chain-stores, and the dominance of national brands over local products, is another minor dimension of the same broad trend. For much of the last century or more, then, it has not seriously been doubted that the social implications of modern technology and industrialization are the reduction of regionalism, if by regionalism we wish to designate small territories exhibiting grossly different characteristics in objective terms such as speech, custom and the like.

If the nineteenth century could be called the century of national integration, with regional differences yielding progressively to national standardization, and national differences in turn yielding to broader assimilation patterns within the industrialized world, the wheel has taken quite a different turn more recently. This recent period could plausibly be designated a period of regional affirmation in spite of the decline of objective broad cultural differences between the regions.

Donald Smiley[9] has pointed out that the rise of the Quebec separatist movement has occurred against a background of considerable social change within Quebec. The particularistic, rural, Catholic Quebec of the earlier part

---

[9] "Reflections on Cultural Nationhood and Political Community in Canada", in R. Kenneth Carty and W. Peter Ward (eds), *Entering the Eighties: Canada in Crisis*, (Oxford University Press, Oxford, 1980), p. 20.

of the century has faded to an amazing extent; in its place has emerged a new modernizing society, dominated by a technologically and state-oriented middle class. Never has Quebec looked more like the rest of Canada; never has the broad objective cultural base of ethnic fragmentation rested so clearly on a single factor, that of language. Indeed, the elements of the Quebec population that support the separatist cause tend to be *more* like their English counterparts than is any other group in the province.

Similarly, Roger Gibbins[10] notes that the cultural and economic differences that separated the inhabitants of the Prairie provinces from the other regions of Canada, and that integrated those three provinces into a single unit that could usefully be discussed in regional terms, have been steadily eroded since (at least) World War II. In purely objective terms, the differences between the inhabitants of what used to be the Prairie region, and the inhabitants of any other part of Canada, are less now than they were between the wars, and far less than they were around the time of World War I. The patterns of national standardization, and the erosion of regional particularities, has operated in Canada as it has in the rest of the modern industrialized world. Yet the assimilation process has not generated a trend toward centralization; quite the reverse. Since World War II, politics in Canada has observed a massive swing of power back to the provinces, a persisting trend toward provincial assertiveness.

It is in this sense that the Canadian experience fits into a broader international background. The Scottish Nationalist Party[11], the Parti Quebecois, the Western separatist movements, the American "sage-brush revolt" might all be suggested as manifestations of this same broad tendency. In all cases, the movement seems to stand in direct opposition to long-term trends toward national integration, and asserts rights on the basis of a regionalism that is often weak on objective cultural criteria for differentiation. The theoretical basis of reconciling objective homogeneity with increasing subjective regionalism is the *rise of the individual,* which requires decentralization, small scale organizations, and consensus (rather than simple majoritarianism) for its greatest realization.

This broader dimension makes the consideration of regional representation more than a response to a short-lived Canadian epiphenomenon. It is simply naive to assume that time is on the side of regional integration and assimilation, that small-based political units are being steadily undermined by the forces of industrialization and modernization, that a steady flow of power toward larger political units is an inevitable feature of modern politics. On recent indications, the reverse is more plausible. By designing institutions to accommodate regional particularism, Canada is looking forward rather

[10]Roger Gibbins, *Prairie Politics and Society,* (Toronto: Butterworths, 1979).

[11]see e.g. Sherri Grasmuck, "Ideology of Ethnoregionalism: The Case of Scotland", in *Politics and Society,* Vol.9, no.4 (1980); esp. pp. 488-490 which are particularly relevant to this suggestion.

than backward. Indeed, if the Canadian response is a positive and innovative one, it might provide something of an example for other countries undergoing parallel problems.

II. REGIONAL REPRESENTATION IN CANADA

It is obvious that regionalism has always been a factor in Canadian politics, and that in the past a variety of ways, both formal and informal, have evolved to accommodate it. Before we can justify the need for constitutional innovation in the pursit of more effective regional representation, it will be necessary to consider each one of these devices in turn, and to suggest why they are no longer adequate.

1. THE HOUSE OF COMMONS

The fundamental principle of representation in the Canadian House of Commons, as in the national legislatures of all democratic countries, is "representation by population" — the representation that is given to any one part of the country is directly proportional to its share of the total population. The most immediate practical implication of liberal democracy, the political equality of "one person, one vote", is realized in the Commons.

The implication of this principle is that minorities, especially regional minorities, will tend to receive representation in the national legislature roughly proportionate to their share of the total population. Indeed, regional minorities are assisted by such a representational system in two ways, neither of which is insignificant. First, because the unit of representation is a geographically-delimited constituency, minorities that are concentrated in certain regions of the country fare much better than minorities of similar size that are dispersed over wider territories. Second, every federal country, and some non-federal countries, places some qualifiers on the principle of "representation by population" in order to enhance the representation of less populated areas.

In a very real sense, then, the House of Commons does represent the regions of Canada. It contains members of Parliament, directly elected within those regions, and directly accountable to the people of the region. It was suggested by Sir John A. Macdonald, and more recently (and surprisingly) echoed by Pierre Trudeau, that this representation in the Commons is sufficient to accord recognition to the regional differences and interests that are so pronounced in Canada.

That the regions are represented in the House of Commons is incontrovertible; that this representation is adequate to secure the necessary sensitivity to and recognition of regional particularities is more open to question. Several factors contribute to the inadequacy of such a suggestion:

i. The extent to which representation by population has been qualified by measures designed to over-represent regions of smaller population has always been extremely moderate. These measures, so far as we are aware, are limited to the following:

a. At the time of their entry into Confederation, both Manitoba and British Columbia were given highly exaggerated estimates for their populations, with a corresponding increase in their representation in the House of Commons at least initially. It is generally thought that these inflated estimates were related more to the level of direct federal subsidies than to electoral representation.

b. The two northern territories have each been given representation in the House of Commons although their individual populations do not yet approach the normal "quota" for seats in the House; more recently, the Northwest Territories has been awarded a second seat based upon geographic rather than population considerations.

c. A variable floor has been set for the representation in the House of Commons for any specific province by the provision in the Representation Act (1974) that stipulates that no province may ever receive in the redistribution of seats following the decennial census fewer seats than it received under the previous redistribution. Newfoundland, New Brunswick, Nova Scotia and Prince Edward Island all seem to have been affected by this rule in the recent redistribution.

d. The complicated provisions for the allocation of seats in the current (1974) Representation Act require that the "electoral quotients" of "small" and "medium" provinces cannot be larger, and may be significantly smaller, than that of "large" provinces. Under the most recent redistribution, it took 81.1 thousand people to earn an additional constituency for Ontario, but only 77.5 thousand for Alberta, 70.6 thousand for Manitoba, and 66.2 thousand for Saskatchewan. The effect of these variable quotients was the addition of about seven seats to the four western provinces, over the number of seats that would have been received under a distribution scheme using a single universal quota.

The net effect of these provisions is very modest, affecting less than twenty seats in a House of Commons that now has 282 members. In contrast, even a unitary system like that of the United Kingdom has established the practice of significantly over-representing regions such as Scotland and Wales in the national legislature by as much as 50% of that to which their population entitles them.

ii. The modest qualifiers to the principle of representation by population in the House of Commons are undermined by the automatic escalation clause that is built into the present Representation Act. This legislation guarantees a growing House of Commons into the indefinite future. Roughly speaking, that legislation generates for the 1971 census an electoral quotient reached by dividing the population of Quebec by 75; for the 1981 census, that quotient will be generated by dividing the Quebec population by 79,

with similar four-seat increases for every subsequent decennial census. Unless the population of Quebec increases at a faster rate than that of Canada as a whole (and it has failed to do so since 1966), this ensures an increasing number of seats in the House after each redistribution. This dilutes the assurances of minimum representation to the smaller provinces. Until 1974, the four Atlantic provinces were guaranteed (under the "Senate Rule") a minimum representation in the House of Commons of at least 30 members out of a total of (about) 265, or 11.3%, no matter what happened to their population relative to the rest of Canada. Since 1974, they are guaranteed at least 32 members in a House of Commons that could pass 400 by the end of this century (depending upon what estimates we make of population trends in Quebec), and this is quite a different matter.

iii. The procrastination that is built into the decennial Canadian redistribution works against the representation of those regions that are enjoying a growing population, a factor that is obviously relevant to some of the current political discontent in Canada. Significant population shifts have taken place in this country in the last 20 years, yet the 1974 general election was still held on the basis of the redistribution that followed the 1961 census. Not until May, 1979 was an election held on the basis of the 1971 census; it seems probable that any redistribution derived from the 1981 census will not be used in a national election until 1988 (assuming quadriennial elections and normal time delays). Alberta's population is estimated to have passed the two million mark some time in 1979, but until the 1979 election its parliamentary representation was based on a 1961 population count of 1.3 million. This tardiness is inexcusable. The United States operates under the rule that any election taking place more than two years after the census must reflect the population shifts recorded at that census, even though the fixed total for the House of Representatives means that such redistribution must always involve the politically sensitive act of taking seats away from some states. The House of Commons would much better reflect the shifting regional balance of the country if:

— all elections held more than two years after census day must be based on a redistribution following from those census figures; and
— such a stipulation must apply, not just to the decennial census, but to the five-year census as well.

The combination of these two rules would ensure that the distribution of seats in the House of Commons would be based on population figures that were never more than seven years out of date; the present procedures allow a time lag of up to 18 years.

iv. The single member plurality vote system that is used for elections to the Canadian House of Commons has a distorting effect on representation for any region, in that it tends to exaggerate voting pluralities or majorities. The problems and costs of such a system of representation have been known for

some time,[12] and the recent regionalization of our formerly national parties is one of the consequences. Given regional discontent with national policies, the normal outcome for an election fought in such an electoral system is strong support for political parties other than the nationally dominant party, and when the discontent of a region of small population takes electoral form, it is normally relegated to the backbenches of the opposition side of the House. The self-perpetuating frustration of such a situation is one of the components of the present phenomenon of Western alienation, and one that is reinforced, rather than countered, by the House of Commons.

v. The basic principle of Canadian government is that of responsible government, the historical outcome of which has been the development in the Commons of disciplined political parties. Members may speak for their *regions,* but they must normally vote for their *party,* and in the *party* caucuses regional representatives suffer the same numerical disadvantage that they do in the House. The plight of regional representatives of this stripe is especially poignant when their party forms the government, and the frustration of Western Liberal MP's between 1968 and 1972 is not an accidental consequence, but one that is built into the Canadian political system.

vi. The fundamental and overwhelming weakness of the House of Commons as an adequate means for regional representation is built into the principle of representation on which it is founded. Precisely because representation in the Commons parallels the distribution of population, those regions of small population are necessarily put at a disadvantage relative to those regions of large population. This is the immediate corollary of representation by population. British Columbia is inevitably outvoted by either Ontario or Quebec. Calculations of electoral advantage on the part of governments will almost invariably lead to policies favoring areas of heavy population concentration over any smaller regional interests. To say this is not to vilify governments but to observe the imperatives of the system. Representation by population means large representation for regions with large populations, whatever disadvantage this might involve for underpopulated regions. What the P.C.I. expresses in abstract form, the House of Commons demonstrates concretely: the extent to which population, and therefore (under the present institutional arrangements) political power, is concentrated in one part of the country.

For these reasons, it is not correct to present the existing House of Commons as an adequate solution to the problem of regional representation, and democratically irresponsible to suggest that a lack of a regional voice is a legitimate punishment to be visited upon those parts of the country that failed to vote the "right" way. Such a suggestion assumes that Western Canadians can remember neither the frustration of the large contingent of Western

[12]The classic statement is Alan C. Cairns, "the Electoral System and the Party System in Canada, 1921-1965", in *Canadian Journal of Political Science,* Vol. 1, no. 1 (March, 1968).

Liberal MP's elected in 1968, nor the political dead-end into which the Progressive MP's of the 1920's were shunted by the operations of the parliamentary system of government. Such a suggestion assumes that Atlantic Canadians are unable to calculate the shrinking power base that representation legislation promises them within the only institution of the national government that is directly accountable, the House of Commons.

The House of Commons is capable of providing a forum for regional *input*, in which the concerns and fears of specific regions of the country may be articulated by the Members of Parliament who represent those regions. It is fundamentally unsuited to providing a mechanism of effective regional *power*, as the principles of majoritarianism and responsible government alike lead in quite a different direction.

2. THE SENATE

The existing Senate was originally created to serve the needs for regional representation, specifically the concerns of the Maritime provinces that their representatives might be overwhelmed in the lower house by the representatives from the central Canadian provinces. The composition of the Senate recognizes "Divisions" (three in 1867; increased to four in 1915), each of which is given equal representation of 24 Senators. Representation for Newfoundland and for the two territories is additional to this basic Divisional allocation.

It is not a controversial point to suggest that the Senate does not now, and probably never has, functioned effectively as a chamber for the special representation of regional interests and concerns. The reasons for this failure relate far more to the basic structure than to the personnel of the upper chamber. Some of the more obvious defects of the Senate as an instrument of regional representation include:

i. A major defect of the Senate is the fact that the status of an appointed body is increasingly suspect in an age that is dominated by a democratic ethos. An appointed legislative body carries with it the taint of anachronism; it is weakly grounded, and lacks the credibility to stand up to the lower house even were it so inclined. Unlike the United States, where the Senate is clearly the senior legislative body, in Canada Senators lack the status and credibility of members of the Commons. The Senate is, not a step forward in a political career, but the terminus. Without the challenge of future election campaigns, there is no incentive for the Senator to keep in touch with political opinion in the region he ostensibly represents, just as there is normally no incentive for concerned groups to regard him as a regular channel to the decision-making process. The relative freedom of the upper chamber, implied by the fact that the life of the government does not stand at issue in every major vote, is wasted in the curious political limbo into which the Canadian Senate is relegated. This aspect is further enhanced by the fact that one obvious source of Senate appointees is defeated candidates, federal and more rarely provin-

cial, of the party that forms the national government. The Canadian Senate contains many individuals who cannot, or who can no longer, be elected; denied by the electorate the opportunity to represent their region through the front door of election to the provincial legislature or the House of Commons, they are given the chance to represent those same individuals through the back door of the Senate. In a democratic age, this further reduces the credibility of the chamber.

ii. If the fact of appointment is a handicap in itself, the mode whereby Senators are appointed further reduces its credibility as a device for regional representation. Senators are appointed by the Prime Minister of the day as an exercise of a power of patronage. There is no tradition of consultation with provincial premiers, although some such consultation may take place if the provincial government is of the same political stripe as the federal government. If the *fact* of appointment denies Senators the legitimacy of an electoral base, the *mode* of that appointment denies them the legitimacy of a provincial base. Accountable to no one, and beholden only to the Prime Minister (or possibly the party) that appointed him, the Senator represents his Division in a sense which is far removed from contemporary theories of democratic representation.

iii. A further defect of the Senate is the basis for representation. The units that are accorded equal representation in the chamber are not provinces, but "Divisions", a constitutional neologism created simply for this purpose, and one that remains suspect and arbitrary notwithstanding the fact that it is more or less reproduced in many proposed contemporary constitutional amending formulas. This manipulation of the concept of region has resulted in an upper chamber whose representation is heavily skewed toward representation by population instead of reflecting the federal nature of the country. The two largest provinces, the central Canadian bogeyman that figures so largely in the politics of Canadian regional resentment, are given

Table 2-1: Representation in Parliament by Province

Province/Territory	% Representation in Commons		Senate	
Newfoundland	2.5		5.8	
P.E.I.	1.4		3.8	
Nova Scotia	4.2		9.6	
New Brunswick	3.6		9.6	
		11.7		28.8
Quebec		26.6		23.1
Ontario		33.3		23.1
Manitoba	5.0		5.8	
Saskatchewan	5.0		5.8	
Alberta	7.4		5.8	
British Columbia	9.9		5.8	
		27.3		23.2
Yukon		0.4		1.0
Northwest Terr.		0.7		1.0

46% of the upper house to go along with the 60% of the representation they currently enjoy in the lower house. The four western provinces, with 27% of the seats in the Commons, have only 23% of the Senate. The most penalized province is not Ontario (which receives about two-thirds the representation in the upper chamber that it enjoys in the lower), but British Columbia. Far from giving increased representation in the Senate to the smaller provinces, the Canadian system perpetuates the political dominance of the larger provinces in both chambers of the bicameral legislature. Canada is the only democratic federal system in the world in which the regions with the largest populations dominate both houses of the national legislature.

The atrophy of the Senate is disappointing in the light of its potential, and this is true in a double sense. FIRST, the Canadian Senate represents a waste of personnel, in that its membership contains a substantial wealth of experience and judgment. All indications are that a considerable proportion of the members take their legislative duties seriously, and it is commonly observed that the level of debate in the upper chamber is much superior to that of the Commons. Much of this is wasted, like a play well performed to an empty hall. SECOND, most other federal systems feature a strong upper chamber as an important device of federal conciliation, a major mechanism of regional accommodation. It is a chamber of real political power and practical political purpose. This wasted institutional space is one of the reasons why Senate reform is recurrently tempting to those who consider constitutional renewal.

Ironically, the formation of the first Canadian Senate was not without promising features. It was formed of prominent individuals nominated by provincial leaders. While hardly an ideal procedure (for the nineteenth century any more than the twentieth), this was certainly an improvement over the patronage-laden overtones of the present Senate.

None of this, of course, is to suggest that the Senate is useless or without power. Many analyses of the Senate have made the opposite point far too convincingly.[13] The point is that what power the Senate does deploy is for circumstances and controversies other than the protection or advancement of regional concerns. In terms of effective regional representation, the Senate is close to a dead loss.

3. THE CABINET

It has frequently been suggested that the Canadian political structure is inherently contradictory because it is an attempt to combine the decentralization of federalism with the centralization of the parliamentary system. However, one accommodation was sought from the beginning: Sir John A. Macdonald's first cabinet, and every Canadian cabinet since that time, has

[13]see e.g. Colin Campbell, *The Canadian Senate: A Lobby From Within*, (Toronto; Macmillan, 1978)

been formed with a careful eye to the representation of regions and interests. The intention is to generate a political decision-making body that is cognizant of the sensitivities and interests of all regions, and able to generate public policy that will respond optimally to these pressures. The most historically evocative example of such a cabinet was that formed by Laurier in 1896, which is considered to have brought together powerful political leaders from all parts of the country to form the national executive.

Since certain cabinet portfolios are especially sensitive to certain regions, the assignment to such a position of a regional representative further enhances the capacity of the cabinet to accommodate regional concerns and preoccupations. At one time, it was fashionable to list the set of political rules that governed the assignment of specific portfolios to specific regions; although this practice now appears to be followed less rigidly, the consideration remains. It would be, for example, a significant concession to western concerns to appoint a westerner as minister of transport or energy.

However, there are several problems to be considered when assessing the adequacy of careful cabinet formation as a device for the representation of regions. Again, we will stress those defects that directly relate to the structural features of the institution, as opposed to those that one might attribute to such historical accidents as individual personality.

i. The allocation of cabinet representation normally has a distinct tendency toward representation by population, the rough rule of thumb being one-third of the seats for Ontario, one-third for Quebec, two or three for B.C., and one each for the other provinces. The less populous regions are represented, but on a distinct minority footing. Saskatchewan can have one voice at the table, but Ontario has ten or eleven. Even if decisions are not made by strict majority rule (as they are not), the balance must tend to be in favor of the many, if only due to the increased opportunities to express a given region's point of view, and the allocation of a broader range of portfolios. No matter how carefully constructed, a cabinet can represent regional concerns only to a limited extent. It can serve as a means of *input* for less populous regions, but not as an effective means of political *power* for those regions.

ii. Although there is no direct logical connection between numbers and merit, there is a significant indirect connection which bears upon the capacity of the cabinet as an effective articulator of regional concerns. The Liberal Quebec caucus includes 74 members; the Liberal contingent from Manitoba includes only two individuals. All other things being equal, and with the best will in the world, it is far more likely that the Quebec caucus will be able to provide two individuals who are administratively competent, personally articulate, and politically influential. It is even more obvious that the Quebec caucus may be able, and the Manitoba caucus will be completely unable, to provide a third such individual. In all save the most unusual of circumstances, factors of merit and competence will amplify the straightforward numerical disadvantage suffered by regions of smaller population.

iii. The deliberations of the cabinet take place within the broader context of responsible government and the normal desire of a government to promote its own re-election in the next general election. Both within the House, and in the planning for electoral strategy, these calculations favor the interests of the larger regions over those of less populated regions whose support figures less prominently in the building of successful voting coalitions. It is Ontario, and not Manitoba or Nova Scotia, that will hold the balance in the next election and determine the next government of Canada, and such a consideration can never be far absent from cabinet deliberations.

iv. The capacity of a region to achieve representation within the cabinet is dependent on its cooperation in electing members of the government party, there being no tradition of coalition government in this country. The recent political trend toward the regionalization of party support in this country is entirely inimical to a regionally representative cabinet. In 1979, it was Joe Clark who could not find enough Quebeckers to fill cabinet positions; in 1980, Pierre Trudeau generated western representation in his cabinet largely by appointing Senators. The same factors that undermine the appointed Senate as a regionally representative body undermine the credibility of an appointed Senator as a member of the cabinet.

v. The tradition of cabinet solidarity has reduced the effectiveness of regionally representative ministers by reducing their alternatives to two: defense of the cabinet position, or resignation in protest. In practical terms, the first represents surrender and the second defeat. Cabinet solidarity and strong parties make it impossible for regional cabinet ministers to muster cross-party support on regional matters. Instead, they must take their lumps in the give and take of a cabinet heavily skewed toward Central Canadian representation, and be satisfied with whatever crumbs fall their way. Sometimes the crumbs can be few, as western Liberals found between 1968 and 1972, even though there was strong Liberal representation in both Cabinet and Commons from the four western provinces.

vi. The tendency in recent years has been toward the strengthening of the office of Prime Minister and a corresponding decline in the power and significance of individual cabinet ministers. This has been exhibited in the rapid turnover of cabinet membership and the short terms most ministers serve in any one portfolio; the expanded activities of the Prime Minister's Office are a part of the same process. This tendency toward a one-man show cannot be blamed upon a single person's character, since similar trends have been observed and deplored in other Western democracies. The problem is that while a cabinet may or may not be regionally representative in any meaningful sense, a single individual cannot be.

vii. Recent trends in the organization of political parties in Canada tend to reduce the extent to which cabinet members can effectively represent the regions from which they come. The age of regional chieftains like Jimmy Gardiner is over; as party systems diverge at the two levels, the "regional

representative" is pushed into a curious limbo. Without the solid base that provincial organizational support provides, it becomes difficult to generate the independence and the indispensability that could provide leverage with a Prime Minister.

The federal nature of the cabinet stands as the major example of the way that the institutions of national government have evolved toward the accommodation of regional concerns and demands, and there can be no doubt that it has in the past served to reflect some concerns of some regions in national policy. However, the device suffers from the same basic limitation as regional accommodation through the House of Commons: cabinet and Commons both reflect majoritarian tendencies, with the unavoidable corollary of *less* representation and therefore *less* effective political leverage for those regions of less population. This inherent limitation has been aggravated by the recent polarization of party representation in the House of Commons.

4. POLITICAL PARTIES

Political parties themselves can function as informal, extra-constitutional, and highly effective devices for the reconciliation of regional differences. This can best be accomplished by a political party that enjoys significant electoral strength in all parts of the country, and that has ties with provincial wings that are also competitive in their respective provinces. Under these conditions, the important sectional differences within the country are replicated within each party, and the compromises and trade-offs can be accomplished with less exacerbation of public feeling. The federal-provincial linkage can serve to reduce open confrontation between the two levels of government by providing intra-party communication channels between factions operating at the two levels. Such arrangements can permit a national party to survive a period during which it elects no MP's in a region without lasting alienation because the extensive organization of the provincial party provides effective if unofficial representation for that region. Saskatchewan during the Progressive revolt of the 1920's is a case in point.

Political parties in Canada are no longer capable of performing this function as well as they have in the past. Their capacity for integrating the diverse regions of the country has been significantly reduced by a number of factors, including the following:

i. The pattern of political support for the parties competing in national elections has become increasingly regionalized in recent elections. The Liberal party has, over the last decade, become weaker and weaker in the area west of the Lakehead, not just in terms of members elected (something that is always subject to fluctuations because of the single member plurality vote system), but in terms of percentage of popular support across the region and in all parts of it. The Conservatives, weak in Quebec since World War I, have gone from defeat to disaster, with even the bedrock 20% + that seemed solid through the Diefenbaker years fading to less than 10%. Finally, the NDP

has consistently failed to make a breakthrough in Quebec, and its support in Ontario and the Atlantic provinces is sporadic and undependable. It could be suggested that in a very real sense, Canada no longer has any truly national parties. Correspondingly, the disputes which have regional overtones must take the form of a heated debate between parties, tending to reinforce the polarization that is already taking place.

ii. The provincial and federal party systems are being pulled apart, as voters support one party at the federal level and another at the provincial. The most extreme cases are the provinces of British Columbia (Socred/NDP at the provincial level and Conservative/NDP/Liberal in federal elections), and Quebec (PQ/Liberal in provincial elections, and so massively Liberal in federal elections one hesitates to dignify any other party by ranking it a contender). In both provinces, at least half the voting public must vote for a different party at the two levels to account for the persisting results. Since electoral volatility has increased, the national parties are increasingly making their appeals, not to large blocs of party faithful, but rather to floating pools of individuals with low degrees of partisan commitment. This reduces the extent to which a national party is dependent upon a provincial machine to deliver the voters, both because the provincial machine (when and where it exists) may no longer wish to cooperate, and because the voters on which the national party depends for its electoral success may not be the same voters that the provincial machine deploys for its own support. Correspondingly, the potential for a regional representative to possess his own support base (independent of the resources and appeal of the national leader) in the form of this provincial organization is similarly reduced. Political careerism replaces regional representation as a viable role for the region's elected representatives.

iii. The tendency over the last two decades has been increasingly toward the separation of the organization and leadership of provincial and federal parties sharing the same name. On several occasions, the most exciting political confrontations in the country have been those between a Prime Minister and a premier nominally from the same party. Certainly Joe Clark found that a "new style" of federalism did not emerge merely because he shared the same partisan label as most of the premiers. The pattern, so common in most countries, of political careers beginning at the provincial level and moving up to the national level is most unusual in Canada in recent decades, reducing the factors both of personal experience and shared cooperation.

iv. At one time, the need for corporate donations for financing the operations of political parties could be itself an integrating factor, in that both levels of the party were often obliged to go to the same donors for funds, enforcing a degree of coordination and cooperation. The recent trends in campaign financing, however, point a different direction altogether. The new requirements for the limitation of and reporting of corporate contributions,

and for the subsidy of candidates or parties from public funds, contribute to the independence of the provincial and federal parties of the same name; indeed, in some provinces it has been the case that a party is obliged to create a separate provincial organization in order to receive such a subsidy from provincial funds.[14]

v. The parliamentary wings of the major national parties have completely escaped the control, and possibly even the influence, of their extra-parliamentary organization. It may, of course, be doubted that the extra-parliamentary wing ever dominated, and one observer[15] has suggested a cyclical pattern in the relation of parliamentary and extra-parliamentary wings. In the present context, the situation has become more critical. Although the major national parties are explicitly federal in their extra-parliamentary organization, with significant representation from every part of the country, their parliamentary wings have been becoming increasingly regionalized in their membership.

The decline of truly national parties with strong provincial wings is a fundamentally important development of Canadian politics in the twentieth century. Some scholars have identified the party system as the crucial factor in the maintaining and transforming of the "federal bargain". This contention certainly is plausible enough, although it is more realistic to depict the party system as the victim, rather than the creator, of the regional forces that have so fragmented Canadian politics. It is easier to decry the loss of the meliorating effects of informal accommodation through an integrative party system, than it is to devise solutions or repairs. Precisely because party systems register and reflect the social forces and pressures operating within the country, it is not possible to legislate their form or their internal dynamics. Sir John A. Macdonald's vision of the type of party system that would optimally operate the new Dominion — a Conservative party in power in Ottawa, with suitably subservient provincial wings in power in every province — has become, in both its major components, impossible to achieve. A more fitting commentary on the party system today is Premier Davis's comment before the 1980 election (possibly facetious, but with considerable substance) that if any of his supporters wanted to vote for Mr. Clark, he would not stop them. Precisely. So much for a party system that bridges and meliorates federal-provincial and national-regional strains and conflicts.

5. FEDERALISM

The most obvious means of achieving regional representation is federalism itself. One fundamental notion of federalism is the division of

[14]Barry Wilson, *Politics of Defeat: The Decline of The Liberal Party in Saskatchewan*, (Saskatoon; Western Producer Prairie, 1980)

[15]Joseph Wearing, *The L-Shaped Party: The Liberal Party of Canada 1958-1980*, (Toronto; McGraw-Hill Ryerson, 1981)

constitutional responsibilities between a national authority (to ensure uniformity in those matters where such universality is necessary or desirable), and regional authorities (to permit maximum opportunity for flexibility of response to regional needs and preferences). Sections 91 through 95 of the British North America Act attempt this difficult project for Canada. The other fundamental notion is that of consensus decision-making, rather than simple majoritarianism, at the national level.

To the extent that the division of powers is effective and appropriate, the problem of regional representation can be partly reduced. Those issues that are most regionally sensitive need never enter the national arena, while those issues that form the national agenda are, ideally, the least regionally divisive. The need would still remain to reflect regional sensitivity within national policy, but a careful division of powers could prevent the overload of the mechanisms that accomplished this.

There are several problems in attempting to resolve even part of the problem of representation through the division of powers, for a number of reasons including the following:

i. It is unlikely that it is possible to define lists of governmental powers clearly and unambiguously so as to make it possible to govern a country without clashes over jurisdiction. Human affairs do not neatly divide themselves into hermetically sealed compartments; human activities, and therefore political undertakings, are necessarily complex and messy. The first defect with the dream of removing the need for regional representation through exhaustive delineations of powers assigned to or shared by the two levels of government is that it is impossible; watertight compartments always leak, the efforts of judges notwithstanding.

ii. The project of drawing the line between provincial and federal jurisdictions becomes even more difficult in the modern era because modern society is more complex and interdependent than it has ever been in the past and because modern governments are called upon to attempt and accomplish far more things for far more people than has ever been the case before in human history. It is hard to think of any significant activity by either level of government that does not send very large ripples across the jurisdictional boundaries; conversely, it is hard to think of any problem or situation that could not be tackled at least in one aspect by either level of government invoking one of the general grants of power in the BNA Act.

iii. The division of powers tends to freeze the allocation of powers deemed appropriate for one sphere of government at a specific point in time. For example, it seems to be a commonplace to observe that "la survivance", the defense and survival of the French-Canadian culture, was one of the imperatives recognized by the Fathers of Confederation, and which resulted in education (inter alia) being assigned to provincial jurisdiction. However, it seems just as plausible, in the context of modern technology, to argue that the

goal of "la survivance" is threatened if communication does not accompany education as part of the provincial arsenal. Even if the goal does not change in its essentials, changing circumstances may require different means to reach that goal.

iv. Even if the distinction between regionally sensitive issues on the one hand, and national agenda issues on the other, could ever have been made definitively, this no longer remains the case. The heaviest arguments now are over economic powers, with one side arguing that increased federal powers are necessary, and the other arguing that increased provincial jurisdiction is essential if regionally responsive economic policies are to overcome the current problems of the Canadian economy. The argument is not over details, but over the basics.

v. The rigidities and boundary problems of the division of powers are significantly offset by the positive benefits and flexibility of *concurrency,* which cannot be achieved when regions confront the national government through their provincial governments, rather than being accommodated routinely within national decision-making processes.

6. SUMMARY

The rationale for considering regional representation, and for suggesting amplification of devices to this end as reasonable proposals to reduce the contemporary political malaise, is therefore quite straightforward. In such territorially diverse countries as Canada, there may exist regions distinctively different from other regions and from any composite national average, such that national policies responsive to a "mere" national majority may inadequately reflect the needs and preferences of the country considered as a whole. There is a need within the government of such a country for devices and instruments to provide special access to the demands of regional minorities. In the Canadian restaurant, blue-plate specials are not enough, and there must also be a large a la carte menu. The development of such instrumentalities, and both the appearance and the reality of special sensitivity to regional demands, becomes in itself a means of binding diverse territorial interests and generating both good will and common purpose, thereby reducing the pressures and resentment that lead to the articulation of hostile regional reactions.

This representation must be purchased at some cost to "one person, one vote" principles. The rationale for representing a region is not that it has some magic percentage of the national population, but that it constitutes a territorial diversity of significant proportions. Democratic anomalies comparable to the equal representation of Nevada and California in the U.S. Senate are unavoidable. Just as the "representation by population" agitation undermined the political stability of the pre-Confederation province of Canada, so the preoccupation with the majoritarian implications of "one person, one vote" principles must undermine the workability of any system that is truly

federal in the sense of containing considerable diversities and cleavages that have organized themselves on a territorial basis.

A federal system is at best a qualified union, a bargain between people who trust each other only so far and always want to hedge their bets. The same air of tentative compromise must guide the ongoing administration of such a union. There is nothing wrong with this. Any democratic political system is committed to a sensitivity toward the interests and demands of minorities; in a federal system, it is especially important that this sensitivity be extended as well to *regional* minorities.

The devices, formal and informal, by which the Canadian political system has sought to accommodate regional differences are no longer adequate. Their sporadic and partial operation will no longer suffice in contemporary conditions. This is partly because structural defects in these devices have become more acute over time, and partly because the demands placed upon those devices by the increasing salience of regional concerns has increased in recent years. It is a fundamental prerequisite for any adequate program of Canadian constitutional change that it address this deficiency.

B. CURRENT REFORM PROPOSALS

III. CONSTITUTIONAL CHANGE AND REGIONAL REPRESENTATION

We have outlined the nature of the problem of regional representation and we have indicated why existing Canadian political institutions are inadequate. We now seek a remedy for this problem.

The last two decades have seen much discussion of political and constitutional problems, and the proposal of many and varied solutions. It would already take a considerable libary to contain all the discussion that has taken place on the subject.

It is not our intention to write a retrospective history of the period. We do not pretend that all the discussions or all the proposals have focussed on the question of regional representation, nor do we fault them for not doing so. Our identification of regional representation as a critical problem is not a denial of the existence of other problems which also demand attention. We propose, however, to consider these proposals only from a critical viewpoint stressing their adequacy in providing for regional representation. We accept that this emphasis may to some extent distort the intentions of the several authors, but we do not apologize for this fact because of our conviction that a set of constitutional reforms that does not address this crucial problem will not serve this country well.

Table 3-1 shows a number of the major proposals of the last decade, and

Table 3-1: Issues Directly Addressed by Major Constitutional Reform Proposals

	Patriation	Charter of Rights	Devolution of Powers	House of Commons Reform	Intergovernmental Institutions	Senate Reform
B.C. Constitutional Prop.					x	
C.W.F. ALTERNATIVES					x	
Ontario Advisory Committee					x	
Constitutional Amendment Bill	x	x				x
Conservative Party Proposals					x	
Canadian Bar Association			x		x	
N.D.P. Proposals				x		
"Harmony in Diversity"			x			
Pepin-Robarts				x	x	
Irvine Proposal				x		
C.W.F. Electoral Reform				x		
"Beige Paper"			x		x	
Constitutional Resolution	x	x				

indicates the questions that they address. The list is, of course, not exhaustive, but we believe that it indicates adequately the parameters of the debate that has been conducted in this country in recent years.

Not all of the matters considered by these proposals can be construed as bearing upon regional representation. The question of a Canadian charter of rights and freedoms is very important, but it bears upon an aspect of politics that is quite apart from that we wish to address. The controversial questions of patriation and constitutional amendment we will also leave to one side, save to comment on the obvious fact that the establishment in a new constitution of adequate means for regional representation would logically require for its continued and assured existence an amending formula that replicated its sensitivity to regional concerns.

With these exceptions, we think that the aspects indicated do bear upon the question of regional representation, some more directly than others. We do not propose to consider closely each major proposal seriatim; space alone would not allow this. Rather, we propose to deal with these ideas on a thematic basis. For each proposed area of reform directed to the question of regional representation, we propose to consider thoroughly the contribution that might be made by reforms or innovations, and to assess the "pros" and "cons" of such changes.

The narrowness of our focus is explicit, and will guide our critical comments throughout. There are a number of reforms to Canadian political institutions and practices which are intrinsically desirable and would redress a number of critical problems, and that would also do *something* for regional representation. Our intention is to examine closely that "something", but not to consider in any detail the other intrinsic merits of such proposals.

We identify four thematic areas under which one may consider the reform of Canadian political institutions in the interests of regional representation. These are:

1. The Division of Powers
2. Reforms to the House of Commons
3. "Federal" Bodies
4. Senate Reform

IV. CHANGES TO THE DISTRIBUTION OF POWERS

Logically, the question of the constitutional division of powers is quite separate from the question of regional representation. What powers one wishes to assign to the national and to the provincial governments is one thing; how one wishes to place constraints or imperatives on the operation of national institutions in the interests of special sensitivity to regional concerns is another.

However, there is no question but that the two have a considerable practical connection. One of the responses of provincial governments to the operations of a national government that is perceived as being unresponsive to regional concerns is to demand the devolution of power from the unresponsive national government to the allegedly more responsive provincial governments. This set of demands cannot be ignored, because it has received considerable popular support; it would seem that both the analysis and the conclusions of the provincial governments in this regard are accepted by many voters as reasonable and relevant. This situation has in turn generated national government proposals that would seek to justify the maintenance (and even the extension) of the powers of the national government on the grounds of a clarified role and mission for that government. Although the debate so far has generated more heat than light, there is an argument going on here that has something to do with regional representation and it should not be overlooked. For better or worse, the argument on regional representation in the immediate context of Canadian politics is now inextricably bound up with the question of the reshuffling of powers and functions between the two levels of government, and it is for this reason that we propose to consider these arguments directly.

One central feature of any federal system is the division of powers between the national and the provincial governments. As an irreducible minimum, each level of government within a federal system must have some guaranteed area of jurisdication within which it may exercise autonomous authority. However, this feature carries with it a number of disadvantages and problems, some very general in nature, and some specific to Canada.

i. No division of powers can be completely cut and dried; there are always a number of programs and policies (of increasing number and importance in the post World War II period of "positive government", as the role of government within the economy and society increases) that fall on both sides of the line. The result is the generation of a large "grey area" between islands of clear jurisdictional responsibility. Especially relevent recent examples

include economic development and communications. Although the formal division of powers provides a constitutional foundation for the resolution of such collisions, it cannot unambiguously divide the areas of governmental activity. The more significant these grey areas, the less the formal division of powers can act as a definitive guide to the practical undertakings of the several governments, and the more often it will be the case that what one government will view as legitimate and essential activities will be viewed by another as unwarranted intrusions.

ii. Even where formal jurisdiction is formally assigned, there is the recurrent problem of matching formal jurisdiction with fiscal capacity: that is, the revenues which provide a particular government with the necessary funds to fulfill its responsibilities. One level of government may have heavy responsibility and limited revenues, while the other has large revenues but a limited constitutional justification for action. The Great Depression of the 1930s is a case in point. No solution of this problem can be final, as the practical implications of any specific head of power and the annual yield of any revenue source will vary considerably from one time to another for a variety of reasons, not least of which is a change in popular attitudes and expectations.

iii. The division of powers in the British North America Act clearly contemplates a dominant role for the central government. The evolution of Canadian politics (especially over the last three decades) has been toward strong provincial governments, but without any significent formal changes to our constitution with regard to the division of powers. These two facts have been accommodated by interpretations of the B.N.A. Act that were highly imaginative, but have over time been sanctified by usage. The result, however, is that in a number of areas the constitution is a very poor guide to actual political practice, which could be seriously threatened by future judicial interpretation.

iv. It is very much to the credit of the British North American Act that the government structure that it created has lasted over a century. At the same time, this poses some problems in that the role of government has changed greatly over the century, and new human activities hardly contemplated in 1867 have become of major importance. The best and most straightforward way to rectify this situation is to modify the document in the light of modern conditions.

For these general reasons, as well as for more specific reasons relating to recent policy differences between the levels of government, several recent proposals for change have stressed the need for a re-evaluation of the division of powers.

1. "HARMONY IN DIVERSITY"

The Alberta Government Position Paper on Constitutional Change that was released in October, 1978, entitled "Harmony in Diversity: A New

Federalism for Canada" is an example of a reaction to the problems suggested above. It recommends flatly "that modification to the division of powers be recognized as the key to achieving a new federalism for Canada" (Recommendation #4).

This general orientation is immediately spelled out in specific detail in the recommendations that follow this flat declaration. It is proposed that provincial ownership and control of natural resources be strengthened and recognized as comprehensive (Recommendation #6); that the provincial authority to tax and to collect royalties from the sale and management of their natural resources be clarified and reaffirmed (Recommendation #7); and that provincial jurisdiction be established over offshore minerals (Recommendation #8). The Alberta government also suggests that provincial governments be given access to both direct and indirect taxes (Recommendation #9); and that the established legitimate role of the provinces in certain areas of international relations be confirmed (Recommendation #10). Finally, it proposes that the list of concurrent powers be extended by the addition of communications (Recommendation #11); fisheries (Recommendation #12); transportation (Recommendation #13); and culture (Recommendation #14).

The Alberta government position paper goes on to recommend the abolition or restriction of those national government powers that permit inroads on provincial actions. The power of reservation and disallowance should be abolished (Recommendation #17); the "declaratory power" of Section 92(10)c should be subject to the concurrence of the province or provinces concerned (Recommendation #18); the emergency power should be severely restricted to the national government's heads of power under Section 92 (Recommendation #19); and the national "spending power" should be severely restricted in areas of provincial jurisdiction (Recommendation #20). Finally, 40% of the members of designated national boards and agencies should be appointed by the provinces, the Conference of Premiers carrying the responsibility of working out a system for this process (Recommendation #16).

These fifteen recommendations are the heart of the Alberta position paper[15], and they spell out an uncompromising vision of a Canadian federation highlighted by strong provincial governments, this strength to be confirmed by major and one-way revisions to the division of powers.

2. THE "BEIGE PAPER"

The position paper of the Liberal Party of Quebec released in January 1980, entitled "A New Canadian Federation" and popularly referred to as the

[15]only Recommendations #24 and #25, relating to an amending formula, seem of comparable importance or priority

Beige Paper, conveys a somewhat similar vision.[17] It too contemplates a significant transfer of powers from the national government to the provincial governments. Provincial governments are to gain the right to raise money by any means of taxation (save tariffs and customs duties), and possible future imbalances between financial capacity and constitutional jurisdiction are to be dealt with through reforms to the taxing structure (chapter #14). The major elements of culture are to be transferred to provincial jurisdiction, primarily as an extension of the provincial powers over education (chapter #15), and provincial powers with regard to family law, divorce and juvenile delinquency are to be extended and entrenched (chapter #16). The provinces are also to gain power with regard to the retraining of labor (chapter #18), labor relations (chapter #19), health and social services and social insurance (chapter #20), and transport and communications (chapter #24). This extended provincial jurisdiction is further protected by restrictions on the exercise of the "unilateral powers" that permit the national government to limit provincial actions or to enter fields of provincial responsibility; these are either to be abolished, or to be subject to ratification by a body comprised of provincial delegations.

3. BRITISH COLUMBIA'S CONSTITUTIONAL PROPOSALS

The constitutional proposals of the Government of British Columbia, presented to the First Ministers Conference on the Constitution in October, 1978, address the question of the division of powers on a more abstract basis. Rather than dealing directly with the details of a divison of powers, and the specific sections of the British North America Act that would require amendment to such an end, this document wishes instead to consider the "first principles" that would guide a clarified division of powers.

The fundamental logic of a division of powers is that one can begin by dividing the areas of governmental activity into two major groups. The first, where a national scope for contemplated activities is desirable or necessary, is to be assigned to the national government. The second, where the policies in question relate directly to significant diversities between the regions, or where inter-regional variation is acceptable and closer responsiveness to regional preferences is desirable, is to be assigned to the provincial governments. The British Columbia document refers to this as the first "organizing principle" for distributing powers, and describes it as involving "recognizing, and attaching appropriate weight to, the factors of *nationalism* and *regionalism*, in our national consciousness." (p. 84). The other two organiz-

[17] the Alberta government position paper focuses on the division of powers and says little about such things as institutional reform or innovation; the Quebec Liberal Party position paper, on the other hand, suggests these revisions to the division of power as part of a more wide-ranging set of changes, including several new institutions and procedures. At this time, we are concerned with that part of the Quebec Liberal proposals involving the division of powers; the other aspects of the Beige Paper are discussed in a later chapter.

ing principles are *Benefit Sharing* ("mutual economic advantage was a prime motivating force behind the union of the original provinces") and *Efficiency*.

However, the British Columbia document does not go very far toward applying these principles to the concrete problems of the Canadian division of powers. A subsection headed "rational arrangements" is concerned less with the content than with the format of any new drafts for Sections 91 and 92 of the B.N.A. Act. The basic logic of the approach appears irrefutable: rather than being concerned with moving the jurisdictional fences six inches one way or the other, constitutional reform regarding the division of powers should be informed by a clear statement as to the fundamental principles to be served by the two levels of government. However, the point is empty unless one proceeds to specify the content of these principles, and this the British Columbia proposal does not do. The document makes more concrete proposals in a number of related areas, specifically:

i. The national government's powers of disallowance and reservation should be abolished.

ii. The federal government's declaratory power should be retained but with serious restrictions, and the federal government's emergency power should be clarified and limited.

iii. Revisions to the division of power should provide for an extended list of concurrent powers with varying paramountcy between national and provincial governments, this proposal being contingent upon the development of better institutional arrangements for the harmonization of the activities of the two levels of government.

iv. There should be more extensive application of a principle whereby the national government creates a law, but the provincial government administers it; such a proposal is hardly radical or subversive of Canadian practice, since this is precisely the way the Criminal Code of Canada has operated since Confederation.

It is not absolutely clear that the net result of the application of the B.C. document's principles to the division of powers would be a further devolution of power, although the undertone of the document recurrently implies this. At the same time, the B.C. document echoes the implication of the Beige Paper that jurisdictional adjustments are complementary to, and not alternatives for, institutional changes in the national government.

4. DEVOLUTION: ADVANTAGES

There are several benefits that might be seen as flowing from such a set of adjustments to the constitutional division of powers:

i. The transfer of more extended powers to the provinces would clearly have positive overtones for the question of regional representation. Clearly Francophone Quebecers are better able to extract desired policies or programs from Quebec City than they are from Ottawa. This is not to suggest that

provincial governments are perfectly responsive, or that there are not groups in the province that are dissatisfied with provincial priorities and actions. However, the shift from being a *national* minority to being a *provincial* majority means a great increase in the prospects of success. Those regional majorities that are not national majorities would gain the policies and the priorities that they could not gain within the larger national setting.

ii. To the extent that the transfer involved areas of major contention between provincial and national majorities (and, not coincidentally, both the Alberta and Quebec Liberal papers are so directed), the result would be a significant decrease in the tensions that we now refer to as regional alienation. The effect would be to "clear the decks" of the national government of these regionally contentious matters to permit it to deal with matters in which nationally consensual policies were possible of achievement. The paradigm for this type of solution is the assignment of jurisdiction over education to the provincial governments in 1867; it is true (as this point is often presented) that this was a significant reassurance to the French-Canadian population of Quebec, but it is equally true, and no less valid a reason for the assignment, that it prevented the sectarian wrangles that deadlocked the assembly of the United Canadas before 1867 from making a regular entry into the deliberations of the new Canadian Parliament by organizing them out of the agenda of that body.

iii. Such a solution would be easy to effect, and straightforward in its immediate implications (however long it might take for all the repercussions to work their way through the system). One level of government would acquire greater responsibility and its officials would take charge of more policies and programs in more areas; the other level of government would lose responsibilities and its officials would be less active in those areas. To be sure, the long-range effects are difficult to assess with accuracy (which is why some critics suggest that we would only be accepting separatism on the instalment plan, depending which way the shift in powers is to go) and there would be transitional problems as the new equilibrium established itself, but this is far from the trip into the unknown that major institutional innovations might involve.

iv. Such a set of reforms would clearly establish a dominant tone to future Canadian politics as a "provincialist" vision prevailed to direct the reallocation of governmental powers and responsibilities. Constitutional change is a practical matter, but it is also a *symbolic* action, a formal ratification and acknowledgment of changes often already realized in practice. These symbolic overtones will set the stamp for the next era of Canadian federalism, removing the disputes over fundamentals from the agenda and clearing the way for more focussed discussion of future problems.

5. DEVOLUTION: DISADVANTAGES

i. The devolution of power to the provinces concedes the obstacles to

devising a regionally sensitive national policy, by exchanging these for the further difficulties of ensuring adequate co-ordination of the policies of the several governments. The transfer of any significant jurisdiction from the national to the provincial governments involves giving up one set (albeit an unsatisfactory set) of policies for ten sets of policies, and if the single national set of policies was unacceptable, the clear implication is that the ten provincial programs would show considerable variation. Such solutions to such problems of excessive centralization bring with them their own problems.

ii. The reallocation of jurisdiction merely shifts the locus of political problems requiring regional representation; short of the two equally unacceptable extremes (multiple separatism and unitary government) it cannot resolve them, and perhaps not even at the extremes. We can move the "grey areas" between the islands of clear constitutional responsibility, but it is an illusion to dream that we could eliminate them, or even do much to roll back the fog. What is now a grey area might become an island under a new divison of powers, but around this new island there would be new grey areas and this would carry with it new policy problems still needing resolution, presumably on the same basis we had tried to deal with the old ones. This is why some commentators see such a means of constitutional change as an "instalment plan" to options so extreme they are now unacceptable. What we need is not empire-building by either level of government, but a firm commitment by both levels of government to the building of a strong and united nation. Both levels of government must recognize that to gain that goal, there must be mechanisms for the coordination of policy between the two levels, and mechanisms for increased regional sensitivity of national programs. *Both* these problems are simply avoided or ignored, not resolved, by approaches that see modifications to the division of powers as the central component of the process of constitutional change.

iii. To pursue regional concerns by such a course is to imply that there is a choice between national policies insensitive to regional concerns, and regional (that is, provincial) policies. Any policy area that takes on regional overtones should by implication come within provincial jurisdiction. In a nation with the regional diversities of Canada, there is little that would not come within such a list.

6. NATIONAL GOVERNMENT RESPONSES

To these provincialist views, one might counterpose a vision that has been implicit in national government programs for the last twenty-five years, and occasionally explicit in the constitutional confrontations that have occurred over the last three years but especially since the re-election of the Liberals in February, 1980. Equalization payments have been adopted as an ongoing commitment to the provision without excessive taxation of standardized and minimum levels of essential services in all provinces. Medicare,

established over some provincial opposition, sought universal accessibility to all Canadians again without excessive rates of taxation in one locality as opposed to another; the Canada Pension Plan and the Canada Assistance Plan have sought portability of benefits and comparable levels of support between provinces. All these programs have sought in a very practical way to reduce the differences between provinces even with regard to policy areas that are within provincial jurisdiction. In some of the proposed national drafts for a charter of rights (although somewhat less so in the version presented to Parliament in 1980), there were clauses that would have inhibited many of the efforts of provincial governments to give preferential treatment to the people of their own province through quotas or preferred rates. At one point in the constitutional deliberations, the national government proposed a new head of national power comprising far-reaching economic powers. Finally, the recent National Energy Program points to the ever-present potential of the national government to increase its powers unilaterally because the British North America Act allocated general and far-reaching powers to the national government. The extensions of provincial power have rested more upon usage and convention than upon the literal words of the constitution. It is argued by proponents of increased power for the national government that much of this can be accomplished if the federal government simply asserts its jurisdiction to the utmost.

It is important to see the provincial suggestions and the implicit national government response as something more than a simple power grab. What is at stake, as many commentators and participants have observed, is different visions of Canada. On the one hand, we have the views of some provincial governments who feel that the people of their province would be better served by a set of reforms that increased the effective power of provincial capitals, in preference to a nation-wide lowest common denominator that is heavily slanted toward a majority position that may not include the people of their province. On the other hand, we have a vision of Canada stressing an unhyphenated citizenship in a sense rather different from that which Prime Minister Diefenbaker had in mind. It is a vision which argues that Canadians from coast to coast should receive government services, enjoy protected rights and freedoms, and share in economic prosperity and security without regard to the regional nature of the country.

There is obviously a sharp contrast between the two visions and the two sets of proposals they engender, one contemplating a larger role for the provincial governments and the second advocating more power for the national government. Both, however, are united by the common assumption that a resolution of at least some of our current political and constitutional controversies could be effected through changes to the division of powers informed by the appropriate vision of the kind of country Canada is and will be.

7. SUMMARY

It cannot be denied that the national government is making a very important and valid point. There are ways in which regional differences are highly relevant to the needs and to the political preferences of Canadians, but there are also matters to which such regional differences and variations are completely irrelevant. To permit regional imperatives to become pre-emptive is to downplay or even to ignore this second set of politically relevant factors, and to take the risk of "organizing out" of politics a set of important political needs. Both provincialists and centralists have their own examples and horror stories. Both can deploy impeccable and solid democratic arguments to defend their vision and their reforms. Where centralists point to a national majority within a single nation called Canada which must be able to prevail if national sovereignty is to mean anything, provincialists point to the democratic mandates of provincial majorities and the democratic value of increased responsiveness to popular pressures that adhere to smaller political units.

But we would suggest that the entire argument is based upon a fundamental philosophical fallacy, the Fallacy of the False Alternative. The debate would seem to present a simple "either/or" choice, a "zero-sum" game. The choice is between *either* a national policy dictated by a simple national majority making no concessions to regional sensitivities, *or* ten different provincial policies dictated by provincial majorities with potentially irresolvable problems of inter-provincial coordination. Only the demonstrable deficiencies of Canada's national institutions and processes, and the completely artificial context they have created, could make these two alternatives seem plausibly to exhaust the range of viable alternatives.

The way to refute the Fallacy of the False Alternative is to indicate that there is another possible choice. In this case, the choice between a narrowly-based national majority, and ten diverse provincial majorities, must be widened to include a third option accepting national policies devised by a regionally sensitive national majority guaranteed by formal and institutionalized procedures.

The introduction of this third alternative creates an opening for an approach to the division of powers which seems inherently desirable in a period which involves extensive government activity, complex social decisions, and overlapping areas of jurisdiction. That approach involves the extension of the areas of *concurrent jurisdiction*, with paramountcy assigned to one or the other of the governments, but both constitutionally empowered to legislate. Such a suggestion seems naive and unrealistic in the present context of Canadian politics, where aggrieved regional majorities have mobilized their provincial governments to confront a national government that is perceived as hostile and unsympathetic, and where the politics of cooperative federalism seem to have yielded to the politics of confrontation. Only in

the context of improved institutional arrangements for generating regional sensitivity in national policy could such suggestions carry weight.

Arguments for massive devolution, and the centralizing arguments they evoke as a response, derive from the failure of regional representation in Canadian governmental structures. In the absence of constitutional changes directed at correcting this failure, the alternatives may very well become that simple, and the outcome may not be pleasant, but this will be the fault of Canadians themselves for having failed to respond in an adequate fashion to the imperatives and the potentials of the current Canadian constitutional crisis. Some fine-tuning is undoubtedly required in the division of powers, and this should be addressed. With regard to regional representation, it is not a matter of fine-tuning, but rather of making any formal acknowledgment whatever of the need, and this simple comparison dictates the priority we assign to the problem.

We conclude, then, that changes in the division of powers, while they may provide some benefits in the public interest and yield some improvements in governmental administration, are not the route to resolve problems of regional representation, nor to make such problems less important.

V. HOUSE OF COMMONS REFORM

One line of argument as to the best means of providing more effective regional representation is almost deceptively simple. It involves reforms to the House of Commons. The suggestion is immediately appealing, because Canadians from all regions of Canada elect 282 Members of Parliament at national general elections that occur, on average, about once every three years. The chamber in which these members serve is the legislative gateway through which all government policy must pass, a formal legal fact that creates an opportunity for considerable regional leverage. It is an opportunity that is seldom realized.

1. ELECTORAL REFORMS

Recent proposals for reforming the House of Commons have suggested the desirability of making changes to the electoral system. The rigors of the single-member plurality vote system have combined with the progressive regionalization of party support in recent elections to undermine the claims of any party in the House of Commons to be a truly *national* party. Although all three of the major parties draw significant support from all parts of Canada, each is effectively shut out from representation in large areas. This raises doubts about the capacity of any government to rule in the best interests of all regions when its caucus lacks any voices from one or more of the major regions. This in turn feeds the alienation that presumably generated the lack of representation in the first place, as that region has its expectations of lack of sensitivity confirmed by its treatment at the hands of a lopsided cabinet and government caucus.

A Liberal party that can elect only two MP's west of the Lakehead, a Conservative party that can elect only one MP from Quebec (and in 1980 could elect only one out of 75), and a New Democratic Party for whom the Ottawa River marks the eastern frontier — all demonstrate graphically the conflicts that divide us, and provide ready ammunition for the discontented in the excluded region. It is of course true that members of Parliament are only one source to whom the government looks for guidance on policy matters, so the graphic picture may be misleading, but the potentially self-perpetuating regionalization of party support and representation is one of the underlying flaws in the functioning of our present electoral system.

Scholars have long decried the potentially dangerous consequences of the way the single member system exaggerates the regional strengths and weaknesses of the political parties. More recent elections have painted the picture so clearly that most Canadians are now aware of the problem. A fifth

or a quarter of the vote, in large areas of the country (such as the conservatives in Quebec through the 60's and early 70's, and the Liberals in the West in r :cent elections) will win few or no seats. The party's parliamentary wing is persistently denied a strong voice from the region, and pursues policies and issues that reinforce its regional unpopularity, a vicious circle which gradually saps the party organization in the region and perpetuates itself. Even worse, from the point of view of national unity, there may be real political gain for a party to exploit its weakness by running a campaign against that region, hoping to gain votes and seats in other more competitive areas. This is a temptation which Canadian politicians have usually, but not invariably, resisted.

In any territorially diverse country, it is to be expected that the voting support for any specific party will vary from one region to another. In only two elections since World War II (1958 and 1968) can we speak with any confidence of nation-wide voting preferences and trends. In all others, a large degree of regionalization of party support has been in evidence, with the two most recent elections providing the most extreme examples. In such circumstances, an electoral system that distorts and exaggerates such tendencies is counter-productive and becomes part of the problem, not part of the solution.

In recent years, and even more so after the experiences of the last two federal elections, a number of plans and proposals have surfaced that would alter the way in which some of our Members of Parliament are chosen. Few would suggest that the single-member system should be abandoned entirely for a proportional representation system. More typically, the proposals envision an additional set of MP's from each province or region to be selected in a manner which will reflect the distribution of voting preferences within the province, whether or not these have resulted in victories in individual ridings. The single member system would continue to yield its bonus to the largest party, but the addition of "add on" MP's would mean that a party which receives a respectable share of the popular vote within a region would no longer be completely shut out from representation by the electoral system.

There are several different ways in which this can be accomplished. One way is to allot extra seats to each province, these seats to be filled by those candidates finishing in second place whose share of the popular vote in their own riding is the greatest. The simplicity of the mechanism is its strongest feature; its disadvantage is that it only goes part way to redressing the problem and could still leave unrepresented parties with significant strength spread evenly across a region. Other proposals contemplate the addition of extra MP's to be allocated among parties in proportion to their share of the popular vote within the regions. The mechanics and the precise number of seats involved differ from one proposal to the next, but all are designed very carefully to ensure that at least the two largest parties, and in some plans all three major national parties, will have elected representatives in the Commons for every region in Canada.

The advantage of the reform would be that one party would no longer monopolize parliamentary representation from a region by winning a plurality or a small majority of the vote. Instead, every party would have in its caucus (and therefore the government could have in the cabinet) elected representatives from every region. Blocs of voters would not go unrecognized and unrepresented merely because they had failed to gain a plurality in any one constituency.

The outcome would (or at least could) be a greater sensitivity by all parties for all regions of the country, resulting from a more diverse and more representative caucus which in turn would generate, for the government in power, a more representative cabinet. There would also be an enhanced legitimacy for all parties, government and opposition, as they speak out on national issues, since the presence within their ranks of representatives from each region would provide a focus of loyalty and a reassurance for inhabitants of those regions.

The most common objection to this type of proposal is that it would create two different types of MP. It is difficult to take this criticism seriously. The alleged homogeneity of the present roster of MP's is no more than a purely formal attribute, as the House of Commons routinely contains within its ranks members who can be differentiated on a number of significant criteria, including the following.

- Government members versus opposition members
- Front-benchers versus back-benchers
- Members elected in general elections versus members elected in by-elections
- Members elected by massive over-all majorities, versus members elected by narrow pluralities
- Members elected from ridings coinciding with identifiable communities, versus those elected from arbitrary blocs carved out of large cities, or huge sprawling areas in the northern parts of the country.

All sit in the same House and cast equal votes, without any talk of different classes of MP or weighted votes or second class status. The addition of yet another way to distinguish one group of MP's from another is hardly a preemptive concern.

It is of course true that the add-on proposals all contemplate a larger House of Commons. In some cases, all the proportional representation seats are simply to be added to the existing House; in others, a potential roll-back of single-member seats is contemplated, but one that is more than off-set by the addition of new seats. Had the various systems been in use for the 1980 election, the number of MP's in the House would have risen from 282 to 330 members (Canada West Foundation proposal), 332 members (NDP proposal), 342 members (Pepin-Robarts proposal) or even 354 members (Irvine proposal). However, the existing Representation Act also contemplates an endlessly expanding House of Commons for reasons that are not precisely clear,

and therefore on principle more objectionable than proposals that would use the new MP's to accomplish the definite and desirable purpose of regional representation. If the result would be a House of Commons that would better accomplish the goal of representing the Canadian people, then neither the "two classes of MP" problem nor the question of a larger House of Commons could outweigh the benefits to that result.

ELECTORAL REFORM: ADVANTAGES

The advantages of proceeding with electoral reform are clear and straightforward, namely:

i. Electoral reform to the House of Commons would improve a body that already exists, possesses solid democratic credentials, and enjoys substantial legitimacy in the eyes of Canadian voters.

ii. Electoral reform to the House of Commons could be accomplished by an act of Parliament without the controversy or confusion of a formal constitutional amendment.

iii. Electoral reform would add neither new institutions nor new elections to the Canadian political process, and would thereby demand neither increased political participation from the electorate, nor complex and unpredictable adjustments from existing institutions.

ELECTORAL REFORM: DISADVANTAGES

One disadvantage of electoral reform proposals is that most of them would place in the hands of the national party organization the right to select the candidates for the additional seats. Such a procedure is doubly objectionable: first, because it imposes a "party-ridden" procedure that contrasts with the jealously guarded autonomy of the individual riding associations; and second, because there is no guarantee that the first priority of the party organization in deciding the assignments would be the facilitation of regional representation.

For our purposes, however, the important question is the extent to which the selection of "add-on" MP's on a proportional representation or quasi-PR basis would contribute to effective regional representation. The answer would appear to be: not very much.

All these systems would operate so as to permit party representation from regions yielding significant support, but not enough support to break through the institutional barriers of the single member system. The prime examples are obvious, and the benefits would go first (but not necessarily only) to Western Liberals and Quebec Conservatives. However, these systems would not alter, in any fundamental way, the internal distribution of representation within any party. The Liberal party would gain a scattering of representation from Western Canada, but it would also gain more representation from Central Canada as well, and the caucus would reproduce much the same

imbalance that now exists. Similarly, Quebec Conservatives would join a caucus in which they were a distinct minority. How much good could these individuals accomplish? For the opposition party, there would be a viewpoint expressed within caucus that might otherwise go unheard, expressing the concerns of a particular region. But these voices would be a minority, likely to suffer the fate so often reserved for minorities within a majority body. If one or more were particularly eloquent, or close to the leader(s) of the party, or could find a way of formulating the special regional concern that did not clash too directly with the other (better represented) regions and their aspirations, then they might well have some impact. Again, however, this impact would be dependent upon happenstance, rather than built into formal institutional arrangements; it is at least as likely that such a small and artificial minority would have little impact.

Within the governing party, the stakes go beyond a voice in caucus to a seat or seats in the cabinet, the more potentially significant in that some portfolios are of special importance to some regions. A Westerner as Minister of Energy, or Minister of Transport, for example, would be a visible symbol of Western representation of the highest order. Again, however, we are playing an expensive lottery with effective regional representation riding on a small number of tickets. If the regional minister is inept, or unlucky, or displeases the inner group that controls the power, then his influence is likely to be small, and his representation of the region unlikely to go beyond symbolism. The evolution of the cabinet committee system suggests, in some interpretations, the development of a more collegial style of decision-making. To the extent that this is true, the discretionary authority of a minister of even a regionally sensitive portfolio is decreased, and his single voice within both the committee and the full cabinet meetings is likely just to accentuate his minority status within the party.

The most invidious disadvantage of electoral reform is that it would not do anything to reduce the disadvantages of a minority group (regional or otherwise) in a majority chamber. None of the proposals do anything to offset (or even to recognize) the policy implications of a strict application of representation by population, or the fears of a region with a small population when forced to defend its interests in such a forum. Such unconcern is expressed in the most blithe and straightforward terms; one such proposal includes among the virtues of the suggested reforms the fact that they would *reduce* the already small distortion between the share of the total population and the share of the seats that would go to the larger provinces.

Strictly speaking, the proposals for electoral reform see as the basic problem, not the need for greater power for regional representatives, but the need to ensure that the caucuses of all (or at least the two largest) major parties contain the cross section of members that they are unable to elect under the present system. Such proposals would provide for regional *input*, rather than for regional *power*.

One must doubt the very premise of the "add-on" approach to the problem, usually left unstated but nonetheless central. As the title of one such article puts it, "Power Requires Representation". While this may be true, it does not follow that representation of itself necessarily guarantees power. After the 1968 election, for example, the Liberal party took more seats in western Canada than any other party (27 Liberal to 25 Conservative and 16 NDP), with the added significance that the Western seats were the difference between a Liberal majority government and a Liberal minority. Western voices did not go unheard in either the caucus or the cabinet, yet it is from this period that the rise of recent western alienation and discontent dates. The western provinces gained representation within the national government, but by all indications they did not receive effective power to go along with it.

This is not to deny that an electoral system directed toward a "fairer" (in the sense of more accurate) reflection of voting preferences would not be a good thing; it merely challenges the utility of electoral reform as an adequate remedy for the specific problem of regional representation.

2. PROCEDURAL REFORMS

The proposals for electoral reforms to the House of Commons are interesting for what they take for granted about the nature of the House of Commons and its procedures. They take as a fundamental given that the House of Commons is a party House. Its members come from all parts of Canada, but they enter the Commons chamber as members of political parties. This fact puts constraints upon what they are expected to say in the House and when they are expected to say it. Even more to the point, this fact puts rigid constraints upon the way they vote.

The single dominant feature of the House of Commons is the fact that it is a confidence chamber. Its support maintains a government in power, and the withdrawal of that support precipitates a general election or a Prime Ministerial resignation. Around this fact and its implications, the House of Commons has built itself. Even the shape of the chamber, with government and opposition facing each other across a space whose width is defined as two sword lengths, reflects this fundamental orientation. (Most of the world's legislative chambers are semi-circular in shape.) More to the point, the political parties have shaped themselves to this imperative. They have evolved structured leadership, a chain of command, party whips, and a disciplined rank and file that votes when and how it is told.

The fact of being a confidence chamber appears at first glance to be a major source of power for the Commons. Upon a closer look, however, it is a source of many of its weaknesses. Successful motions of non-confidence are rarities, having happened in Canada only four times in this century. But the possibility of such an occurrence has forced all political parties, government and opposition, to organize to prevent or promote it, and this organization

carries over to all votes in the chamber (save for rare "free votes"), and even to the deliberations of Commons committees.

It is only the reality of the House of Commons as a party House that generates the problem to which electoral reform proposals respond. The problem is not that (say) British Columbia does not elect its share of MP's, but that it has failed to elect any MP's of the governing party. The effective representation of regional concerns must take place, if it takes place at all, within the government cabinet and caucus. Speeches from across the floor, whether in the form of persuasion, pleas, or threats, count for little, because a region whose MP's are relegated to the opposition is a region without effective representation in a party House.

The electoral reform proposals take this feature for granted. They do not attempt to confront it, but to get around it. If parties form solid and impenetrable blocs, then the only way for regional voices to be heard is for them to be present within the bloc. If the single member system is no longer yielding this result, then a system must be adopted that will. The proponents of such proposals have no objection to an electoral system that distorts the voting preferences of Canadians; all they object to is shut-outs.

But there is a second way to approach the problem. The regions of Canada already possess representatives in the form of elected Members of Parliament. If the discipline of the major national parties inhibits effective regional representation, then that discipline should be softened. If Commons procedures force MP's into tight party blocs, then those procedures must be modified. The problem is not that the regions lack representatives, but that those representatives are not effective. The obvious first attempt at a solution must be to make those representatives more effective, rather than to add more representatives of more kinds in more chambers.

There is a fundamental truth to this approach which cannot be denied or neglected. All regions of Canada are represented by Members of Parliament. Anything which makes those MP's more idependent, more free to express their concerns and to follow through with their votes, must enhance the effectiveness of these representatives for regional purposes. We will consider how far this truth takes us after briefly examining the changes that are sometimes suggested as leading in such a direction.

VOTES OF CONFIDENCE

Because the House of Commons is a confidence chamber, it must be a party chamber; that is, because the survival of the government can ride on votes within the Commons, the government must mobilize its supporters under firm discipline to maximize its chances of survival, and the opposition party or parties must mobilize its supporters under almost equally firm discipline to maximize its chances of defeating the government. The outcome of this discipline is to make the vote on a confidence question under majority

government conditions a foregone conclusion, more a symbolic gesture by the opposition than a serious effort that had any real chance of success.

But this raises the question of what it is that is to count as a confidence question, with the life of the government standing or falling on the outcome of the vote. The most straightforward case is a formal motion "that this House has no confidence in the present government", the passage of which would certainly require that the government must either resign, or dissolve the House for a general election. Beyond this extreme case, the matter is extremely hazy. Defeat on the Debate on the Speech from the Throne, or on the Budget, should probably also have the same effect. Generally it has been held that defeat on any money bill is also a matter of confidence, and that defeat on any major legislation is likewise, and finally that the government is able to make the passage of any piece of legislation a confidence question by declaring the fact in advance. The haziness is itself instructive; this is all a matter of practice and convention, and nowhere written on tablets of stone. Indeed, in the earlier days of Confederation, when party discipline was much looser, government defeats were quite common, even on money bills, but this was never taken as necessitating resignation or dissolution.[18]

To this formal question of confidence one should, to be realistic, add the informal dimension. Now that party discipline and a solid party vote has become so routine, any departure from that solidarity is in itself noteworthy and therefore newsworthy. Any break in the ranks of the party is likely to be interpreted by the news media as a sign of weakness on the part of the leader, or an indication of a major schism. When a bloc of western Conservatives refused to follow the party whip and support the Official Languages Act, this was interpreted as a major attack on the leadership of Robert Stanfield. When the Saskatchewan MP's recently announced that they could not follow party leader Ed Broadbent on the constitutional resolution, this was taken as a major crisis for the New Democratic Party. Canadians are hard to please; when we are not castigating MP's for a lack of independence and initiative, we are branding them as rebels and turncoats for breaking ranks.

But the importance of determining the boundaries of true confidence questions remains. If it is the potential fall of the government that justifies tight party discipline, and if it is only on confidence questions that this matter comes into doubt, then on matters other than confidence questions the tight discipline must be less justified. If MP's are disloyal to their party and to the expectations of their constituents by not voting with the party bloc on matters that seriously can be considered as confidence questions, then it must be something less than treason or disloyalty to break with the party, at least on some occasions, on questions less fundamental to the government.

---

[18]cf. Eugene Forsey, "Government Defeats in the Canadian House of Commons", in *Freedom and Order: Selected Essays*, (Toronto; McClelland & Stewart, 1974).

The question is a serious one, for it opens up real potentials for the role of the House of Commons. MP's can seldom be independent in their votes because the House is a confidence chamber; however, when the House is not a confidence chamber, independence becomes possible. Amendment, even defeat, of government legislation becomes conceivable, if party ranks open to allow cross-party factions to form and apply leverage to gain concessions. Given the strength of party ties and the loyalty of most backbenchers, it is hardly to be expected that the opportunity would be used frivolously. However, it would encourage the member of Parliament to remain closely attuned to the opinion of his own constituents, and the party leadership in turn to keep close touch with the opinion of their own backbenchers, because they would have a real option for independent action.

Strangely enough, this is precisely the development that has occurred in Great Britain itself; once the prototypical system for disciplined parties and tame backbenchers, the Mother of Parliaments no longer deserves this reputation.[19] The last fifteen years have seen a sharp increase in the defeats and major revisions that have been forced on governments by the House of Commons. Both Labour and Conservative governments have suffered such indignities, although the trend has been more pronounced under Labour administrations. Nor is it a single group of dissident backbenchers concerned with a single set of issues; shifting coalitions of backbenchers are prepared to act on a wide range of issues. In sharp contrast to the situation of twenty years ago, British backbenchers now feel much freer to call things as they see them, rather than meekly following the whips. They can do so because, as the convention has evolved in Britain, these defeats and reversals will not bring down the government. In practice, of course, the causation worked in the opposite direction: the rules changed because backbenchers began to defeat governments, whose continuation in office indicated an acceptance of the new practice.

The Pearson precedent of February, 1968, suggests that Canada is evolving in the same direction. It is no longer necessarily the case that a government defeat, even on a money bill, necessarily means resignation or dissolution; instead, the House will be given a chance to state directly whether it meant to vote non-confidence, or merely to defeat (or change) a particular bill. As in Britain, this was not the case of a government voluntarily giving the option to the opposition and/or its own backbenchers, but rather of a government, having suffered defeat in the Commons and not wishing to face an election, deciding to accept the defeat and cut its losses.

The *advantages* of effecting regional representation in such a form are obvious, but worth recapitulating. *First*, regional representation would be accomplished by Members of Parliament, that is by individuals that we

---

[19]cf. John E. Schwarz, "Exploring a new Role in Policy-Making: The British House of Commons in the 1970s", in *The American Political Science Review*, Vol. 74 no 1 (March, 1980), pp. 23-37.

already elect directly to represent us. *Second*, because the Commons is a public forum, the efforts of Members of Parliament to achieve leverage for regional causes would take place in public, and thereby enhance the legitimacy of the Commons by showing all members of the public that their concerns are addressed and real efforts (sometimes effective even against initial government indications) are made on their behalf. *Third*, an increasing public perception that Members of Parliament would be free to vote their conscience, not their party, at least when the survival of the government was not directly at stake, would encourage citizens to consider the candidate as well as the party in general elections, since his vote would not be irrevocably locked up for the entire Parliament.

But the *disadvantages* are equally obvious. The first is that changes in the procedure of the Commons to allow MP's a greater degree of freedom in matters other than formal confidence questions would do nothing to reduce the second major defect of the House of Commons as a chamber of regional representation, the fact that it is based on representation by population. This must mean less representation, and therefore less power, for the smaller regions. A greater degree of independence on the part of MP's might increase the possibility of regional *input*, but it could do nothing to increase the regional *power* of less populated areas save in the most fortuitous of circumstances. The 95 members from Ontario must always carry more weight than the seven from Newfoundland or the twenty-one from Alberta. The second major disadvantage of the suggestion is simply that it has not happened yet. If backbenchers wanted to open up the process by asserting a greater degree of voting independence, nothing could stop them from doing so. The Pearson precedent suggests that governments will on occasion back down from such a confrontation, and a public awareness that the government does have a choice other than dissolution would create a reluctance to call an unnecessary election. But the backbenchers have not seized power, and it is naive to think it will be handed to them. The discipline of Canadian parties holds tight, even when the survival of the government is not, or should not, be in question. The independence that would be necessary to generate a meaningful regional representation role cannot be legislated.

MODIFYING THE COMMITTEE SYSTEM

The line of argument that would see value in changes to the committee system parallels in miniature the line of argument supporting freeing up MP's on the floor of the Commons for a more effective role in regional representation.

The notion of a Member of Parliament pursuing an effective role of regional representation through committee activity has a number of facts in its favor. The first is that committees are smaller than the whole Commons (most have only 20 members), and this increases the extent to which any individual member can take part in deliberations and hope to influence the

outcome. The second is that committee deliberations take place without a great deal of publicity, which means that a certain amount of flexibility on the part of backbenchers can occur without the media beginning to suggest that the leader's grip is slipping or that the party is falling apart.

In a Parliamentary system, the power of any committee or set of committees is sharply limited by the procedures of the House. Bills are referred to committee only *after* second reading, only *after* they have received approval in principle. The committee can therefore recommend only changes in detail, not fundamental changes that affect the principles of the bill. This can be seen as either an advantage or disadvantage. On the one hand, only details and not fundamental aspects of the bill can be attacked, meaning that even a powerful and independent committee can influence national policy to only a limited extent. On the other hand, because the principle of legislation is not in doubt or open to challenge, a government can more readily accept proposed changes from a committee. In matters of detail, in questions of fine-tuning policy to meet regional concerns, such scope for action may be adequate or at least helpful.

On a more negative note, the fundamental limitation of the committee system is that a committee, however powerful and independent, can only *recommend* changes to legislation. After committee deliberation, the bill returns to the floor of the Commons where the proposed changes are considered. This again submits the matter to a party house, operating under tight party discipline and in the full glare of publicity. An independent committee system can complement the operations of a House in which the backbenchers have asserted a degree of independence on questions where the survival of the government is not at issue, but it can never substitute itself for such a forum.

The committee system in the Canadian House of Commons has been undergoing more or less constant revision for almost twenty years. The more recent reforms of the Trudeau administration, a consolidation of early initiatives, have gone a long way towards creating a credible committee system. The number of committees has been reduced; the division of labor between the committees has been clarified; the size of committees has been reduced, making the deliberations and scheduling of meetings more meaningful and plausible; estimates of relevant departments are referred to specific committees rather than to the whole House; and the referral of legislation to committee consideration has become much more routine and automatic. All these are positive steps.

At the same time, there remain several problems. First, the tendency has been *away* from impartial chairmen in a committee *towards* the use of chairmen whose duty it now is to advance the government cause. Second, membership on a committee is left extremely flexible, in that the House leader for any party can on short notice replace any or all of his party's members on any committee. This has led to the creation of what the literature

unambiguously refers to as "goon squads" who are switched into a committee which is causing embarrassing delays or suggesting too many amendments. These two developments have generally negated much of the initial promise of committee reform.

An interesting experiment has occurred in prototype in the current parliament. Five special committees were appointed to investigate specific but fairly broad policy areas. Membership was small (seven members, or about one-third of the size of most Commons committees), and no substitutes were allowed for any of the members. The committees received briefings from relevant departments and held public hearings in various parts of the country before making recommendations. Several features of such a committee are most promising, such as the limited size, the ban on substituting members, the authority to travel and hire support staff, and the expectation that a solid set of recommendations will issue from its deliberations. It is too early, of course, to evaluate the significance of this experiment. Much would depend on the extent to which government members of the committee were expected to lead, rather than merely to echo, government opinions, and on the extent to which similar reforms spread to standing committees as well as to special select committees of limited lifespan.

The major *advantage* of committee reform is again the fact that it would draw upon a resource that is currently under-utilized, namely the backbencher. MP's run for office with visions of public service and a real contribution to the people of their constituency; often they spend their one or two terms in office making the unedifying journey from enthusiasm through disillusionment to frustration. Both the House of Commons as a body, and the member of Parliament as an individual, possess considerable legitimacy and respect in the eyes of the public in all parts of the country, and a larger role for the individual MP would be publicly acceptable.

But the major *disadvantages* remain. First, the committee system operates under the shadow of a party House. Second the Commons, and by extension the committees themselves, are based on the principle of representation by population, which attaches importance to citizens in terms of their numbers rather than in terms of their region.

3. SUMMARY

Neither under the present electoral system nor under partial Proportional Representation systems, neither with the existing parliamentary rule on confidence questions nor a more relaxed rule, neither with the existing committee system nor with one that was afforded greater real independence, can the House of Commons adequately perform the role of regional representation.

This may seem a harsh judgment, and one that is both unflattering and dismissive to the House of Commons and the members who serve in it. This is not our intention. The House of Commons represents the people of Canada

on the basis of representation by population, and this representative function earns it the right and the duty to serve as the confidence chamber whose support maintains a government in office, and whose withdrawal of support necessitates a general election or a Prime Ministerial resignation. With the responsibility of being a confidence chamber goes the need to operate as a party house, any other preoccupation undermining the effectiveness of the principle of responsibility.

To represent the people on the basis of population, and to support or defeat the government of Canada, is ample responsibility for one chamber. To overload the functions of the Commons by expecting it adequately to serve the needs of regional representation as well is to jeopardize its performance of its other functions as the price for a partial success in representing the regions. The outcome of taking on too many jobs at once is not doing any of them well, and this is a fate to which we should not consign the Commons.

It is not so much that the House of Commons has failed in the task of regional representation, as that it was never designed to accomplish that task in the first place. The creation of a separate institution for the purpose of regional representation is not a denigration of MP's, but an attempt to clarify the effective role they can play, by no longer expecting them to fulfill a role they cannot play.

VI. PROPOSALS FOR INTERGOVERNMENTAL INSTITUTIONS

We have provincial governments and we have a fair idea of what we want them to do. We have a national government, and we have some idea of what we want it to do. The question is, what should our *federal* institutions look like, and what should they do?

This brief statement provides the basic logic for a radically different approach to federal institutions. To be sure, it is a logic that is impeded by a misappropriation of terms that has become commonplace in Canadian politics. We normally refer to the government in Ottawa as the federal government, a practice that is not without irony given the fact that no other federal system is so deficient as Canada in terms of institutionalized structures for the articulation of regional concerns.

More properly, we should call the government in Ottawa the *national* government. A federal system is one in which jurisdiction is divided between (at least) two autonomous levels of government, each acting directly upon the people. The term "federal" applies, not to the national scope of any institution or measure, but rather to the extent to which its personnel, its responsibilities and its functions embrace both levels of government. By using the word "federal" as a synonym for "national", Canadians have lost sight of the possibility, even the necessity, of evolving a new set of institutions to exist and function in the space created *between* the two levels of government. Only institutions filling such intergovernmental space truly deserve the term "federal".

There are, then, three different approaches to the resolution of regional concerns in a federal system. One would proceed by a division of powers, allowing each region to make its own policy on matters of special concern to the regions, with some accommodation to regional representation in the national government through informal mechanisms. A second approach would create "federal" institutions to stand above or between the national government and the provincial governments, reconciling or restraining both levels equally. A third approach would devote the upper chamber of a bicameral legislature to the representation of regional concerns within the national policy process, using direct elections or more indirect methods based on national and provincial general elections.

To be sure, this dissection into three different approaches understates a considerable degree of confusion, as not all proposals have been informed by such a classificatory scheme, and not all commentators would be willing to

agree that the present nomenclature of the "federal" government represents a verbal and conceptual distortion. For example, the national government's Constitutional Amendment Bill of 1978 included a new and renamed Senate (that is, a "type three" reform), but its elaborate scheme for representation, reflecting the results of both national and provincial general elections, would have been more appropriate to a "type two" reform.

1. THE COUNCIL OF PROVINCES MODEL

One device frequently mentioned as a means of providing for effective regional representation through intergovernmental mechanisms is the Council of Provinces model.[20] It has been suggested by academics for decades as a concept well worth exploring,[21] and it is clearly the dominant model to have emerged from the major conferences and debates of the last five years. A few examples will suffice to document this claim:

i. The proposals of the Government of British Columbia: Since 1976, the government of British Columbia has argued for a new upper chamber with equal regional representation consisting of provincial delegations; this proposal was presented in its most extended and articulate form for the Constitutional Conference of 1978. It is probably accurate to identify the British Columbia government as the earliest, the strongest, and the most unswerving supporter of this plan.

ii. The Canada West Foundation ALTERNATIVES Paper: The major paper of the Canada West Foundation ALTERNATIVES Conference in March, 1978, was entitled "Toward a Viable Federal System for Canada", and proposed an upper chamber consisting of provincial delegations with the vote of each delegation weighted on a sliding scale related to population.

iii. The Ontario Advisory Committee on the Constitution: This group proposed an upper chamber with provincial delegations, the numbers of each delegation varying according to a complicated formula related to population: the two largest provinces would have six members, and all the others would have two except for B.C. (4 members), Alberta (3 members) and Prince Edward Island (1 member).

iv. The Canadian Bar Association Committee on The Constitution: This group issued a major report entitled "Towards a new Canada" which proposed an upper chamber consisting of provincial delegations, with the size of

---

[20]this is intended to identify the model by its common name, and does not take for granted that the name of the upper chamber should actually be changed; this is a separate, and quite ancillary, question.

[21]see e.g. Peyton Lyon, "A new idea for Senate reform", in *Canadian Commentator*, (July-August 1962); E. D. Briggs, "The Senate: Reform or Reconstruction?" in *Queen's Quarterly*, Vol. 75 (Spring, 1968), pp. 91-104; R. L. Watts, "Second Chambers in Federal Political Systems", in *The Confederation Challenge*, Vol. 2, (Toronto; Queens Printer of Ontario, 1970), pp. 315-355; and R.M. Burns, "Second Chambers: German Experience and Canadian Needs" in *Canadian Public Administration*, Vol. 18 No. 4 (Winter 1975), pp. 541-568.

each delegation varying in a fashion roughly approximating the representation now accorded to each province within the existing Senate, save for heavily increased representation from the four Western provinces.

v. The Report of the Task Force on Canadian Unity: The report of the Pepin-Robarts Task Force, entitled "A Future Together", proposed a Council of the Federation to be composed of delegations from provincial governments headed by an individual of ministerial rank.

vi. The "Best Efforts Draft": The committee of constitutional ministers who met over the summer of 1980 as an extension of the constitutional conference of Spring 1980, recommended the adoption of a Council of Provinces that would consist of equal delegations from each of the ten provinces. The proposal assumed the existing Senate would remain unaltered.

All the above proposals accept the basic premise that the place where regional representation is to be achieved is within the national government through an upper chamber, and that the effective agent for achieving this representation and articulating the regional viewpoint is to be primarily the provincial governments. The central elements of the model are discussed below.

BASIS FOR REPRESENTATION

The proposals all envisage an upper chamber that is to be composed of provincial delegations. This statement lends itself to misunderstanding, which it usually receives. The intention is not that the existing Senate be continued, save with provincial appointment in the place of national government appointments. Rather, the Council of Provinces would consist of delegations from provincial governments casting a single vote. The emphasis here is on *delegation* rather than *appointment;* it is not contemplated that participation in the upper house would be a full-time activity, nor that individuals would be assigned to it for fixed terms. Rather, a provincial government would send a group of delegates to sit and to speak in the upper chamber, to be replaced by another group at the convenience of the provincial government.

Individuals sitting and speaking in the Council of Provinces or its committees would be present as instructed delegates from their respective provincial governments, expressing in a public forum the concerns and reactions of that government to proposed national policy. With the exception of the B.C. government's proposal, which provided for individuals voting under special circumstances, no individual would cast an individual vote, but rather would join with the other members of the delegation to cast a single provincial vote as they had been instructed to do so by their provincial government.

In the House of Commons, an individual Member of Parliament represents (in an extended sense of the word) a bloc of citizens, grouped in a territorial unit called a constituency. In a Council of Provinces, an individual would be one part of a delegation that would represent (in a much more limited, direct and immediate sense) provincial governments. Although the Council of Provinces model assumes a legislative chamber, it would not be a simple modification of the existing chamber, but a completely different kind of legislative body. Comparisons to federal-provincial conferences would be more appropriate than comparisons to the existing Senate, save that there would be a formalized decision-making procedure allowing a decisive vote to conclude the deliberations.

It misses the point to describe and criticize such a legislative body as one whose proceedings would be constantly disrupted by the coming and going of rotating provincial delegations: the "revolving door" legislature, as some have labelled such proposals. This would be true only if the revolving delegations had to be integrated qua individuals, needing to be socialized into procedures and expectations, to catch up on the background of precedent and information, to form the interpersonal networks without which no legislative body can function. In a sense, the real member of the upper chamber would be the provincial government, a body of considerably greater continuity and resources than any one individual, this member being represented by delegations selected for limited periods and specific proposals.

Viewing provincial governments, rather than the individuals making up any specific delegation at any one time, as the real members of the Council of Provinces would reduce the perils that are thought to flow from constantly changing membership. However, at first glance, it would seem to do so only at the cost of letting such instability in through the back door. Within any four-to-five year period, there must normally be one national general election, but at least ten provincial general elections. In any twelve-month period, therefore, two or three or even more provincial governments might change, even during upper chamber consideration of a single bill, and this could have significant implications for the disruption of the legislative process.

In practice, however, the problem seems to be one that is easily exaggerated. During the period from 1945 to March 1, 1981, there have been more than one hundred provincial elections but only 23 changes of provincial governments, an average of one every eighteen months. For a Council of Provinces, this would mean that one-tenth of the chamber would be changed every year and a half, a rate of turnover that compares favorably with the House of Commons. Since World War II, we have held national elections a little more often than once every three years, and on average the number of new members in each House has been around 40%. This generates an annual average rate of turnover approximately double what is to be anticipated of the proposed Council of Provinces. No one, of course, would deny that such a high rate of turnover has hurt the effectiveness of the House of Commons, but

the point is that it has not prevented the House from working; a much lower turnover rate would hardly debilitate the Council of Provinces.

VOTING STRENGTH

The Council of Provinces proposals envision a legislative chamber within which instructed delegates will express provincial concerns; most of them observe that these deliberations will conclude with a formal vote in which each provincial delegation will cast a single vote. The question becomes the way in which the votes of these various delegations are to be counted in arriving at a majority. One possibility is to treat each delegation as casting an equal vote; the alternative is to weight the vote of different delegations according to different formulae.

The question of the weighting of the vote of provincial delegations is, in one sense, a minor problem. It affects neither the composition nor the proceedings of such a body, and is probably also irrelevant to the question of the powers assigned to it. In another sense, however, it is the crucial factor. If the weighting of provincial votes approaches equality, this becomes a clearer guarantee to less populous regions that their concerns will be treated seriously and given a major weight in the formulation of national policy. But if the weighting parallels representation in the Commons (or even the existing Senate), the usefulness of the new body as an instrument of regional representation would be minimized, even prevented, in advance. In the light of some of the present discontents within the Canadian federation, it is instructive to bear in mind that the representation of the western provinces (whether we want to include three or four) is *lower* in the Senate than it is in the House of Commons, a graphic illustration to frustrated westerners who feel themselves to be a minor and unheard voice. The purpose of designing new institutions is not to build castles in the clouds, but to respond to existing problems and attempt to prevent their exacerbation.

The Canada West Foundation proposals suggest assigning provinces representation on the basis of a sliding scale based on population. Provinces would be divided into four categories: the first (population over 5 million) would have 24 seats; the second (population between two and five million) would have 12 seats; the third (population between 500,000 and two million) would receive six seats; and the fourth (population less than 500,000) would have three seats. The application of this model to Canada would yield an upper chamber of 105 seats, and a P.C.I.[22] of 17.01 (where 0 would represent equal representation of all provinces).

Both the Ontario Advisory Committee and the Canadian Bar Association proposals assign representation somewhat more arbitrarily. The Advisory Committee addresses itself more directly to the weighting of representation

[22]For an explanation of this measure of concentration, and a rationale for employing it, see Appendix B.

than to actual numbers. If Prince Edward Island is taken as a single unit, then five provinces (Manitoba, New Brunswick, Newfoundland, Nova Scotia, and Saskatchewan) receive a double weighting, one (Alberta) a triple weighting, one (British Columbia) a quadruple weighting, and the two largest provinces (Ontario and Quebec) receive a weighting of six. The Council of Provinces would contain a membership that was some multiple of 30, and the P.C.I. of the proposal is 14.33.

The Canadian Bar Association proposal is even more obviously a compromise between the present situation and an allegedly desirable solution; all six of the eastern-most provinces (Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, Ontario and Quebec) would retain the representation they now enjoy in the existing Senate, but representation for each of the four western provinces would be doubled from six to twelve, and for the territories from two to four. Although some reference is made in the proposal to the idea of regions, there is no real rationale for simply treating the present Western Division of Section 22 of the BNA Act as a "double" region. The total size of such a chamber would be 130, and the P.C.I. of such a proposal is 12.78.

The British Columbia proposal is, in a curious way, the most traditional of those so far considered. Although the reference is to a sliding scale for provincial representation on the basis of population, the practical application is entirely in terms of regions, each of which is to be equally represented. To the familiar triad of the Atlantic region, Quebec and Ontario, the proposal would add two other regions: the Prairies and British Columbia. The multi-province regions would divide equally the 12 members that are to represent each region. The total size of the chamber would be 60, and the P.C.I. of the proposal is 16.00.

The "best efforts draft" emerging from the summer-long deliberations of the committee of ministers, is surprisingly the most radical of the proposals in this genre. The hard-headed politicians have in this regard proved more daring. They proposed equal representation for all provincial delegations, regardless of population or arbitrary regional designation.

Table 6-1: Intergovernmental Institution Proposals: A Comparison

PROPOSAL	PROPORTION OF SEATS FOR: WEST*	CENTRAL	EAST**	P.C.I.
Canada West Foundation	34.29	45.71	20.00	17.01
PRESENT SENATE***	23.53	47.06	29.41	16.58
British Columbia Plan	40.00	40.00	40.00	16.00
Ontario Advisory Comm.	36.67	40.00	23.33	14.33
Pepin-Robarts Comm.	36.67	40.00	23.33	14.33
Canadian Bar Assoc.***	38.10	38.10	23.81	12.78
"best efforts draft"	40.00	20.00	40.00	0

legend:
* arbitrarily including BC, Alta, Sask, Man
** arbitrarily including NB, NS, PEI, Nfld
*** territorial representation excluded

A Council of Provinces in which representation is skewed towards representation by population would tend to reproduce the problems already existing within the House of Commons with regard to regional representation. Since not all federal/provincial policy disputes take the form of centre/periphery confrontations, a Council of Provinces with such a basis for representation would itself involve a change in the dynamics of Canadian politics.

However, many of the federal-provincial disputes in Canada do take the form of opposition to central Canadian initiatives by the governments of the less populous regions of the country. It is not enough to replace a situation in which the voters of central Canada acting through their majority representation in the Commons can always have their way, with a situation in which those voters acting through both their MP's and their provincial governments can have their way. The aim must be, through reform to the upper chamber, to move the locus of decision-making beyond the Queens Park/Quebec City/Ottawa-Hull triangle, not just when this cosy trio disagrees, but all the time, and in such a way that people outside this area are aware and confident of it. It is only such a measure that will assure Canadians from the other regions that they are truly a part of the Canadian decision-making process, and that their concerns will be adequately considered.

This need would seem to require a weighting of provincial votes that approaches equality. The proposal of the committee of ministers suggests just such a solution.

Preoccupations with the *numbers* of members sent by each province is a transitional, and incomplete, understanding of the implications of membership in this new kind of legislative chamber. One way of weighting provincial votes would be through the different numbers of people physically present, and this is indeed how we achieve this in the present House of Commons and Senate. However, because each provincial delegation casts a single vote, it is irrelevant what the size of that delegation might be, and one can deal with the weighting (if there is to be any) on a more abstract basis. Only the proposals of the Ontario Advisory Committee seem even to begin to understand the implications of this; all others still seem to be preoccupied with the number of members, as if one were creating a legislative body similar to the present Senate.

COMPOSITION OF PROVINCIAL DELEGATIONS

What sort of individuals might make up these provincial delegations? Obviously the stature of the new institution, and the conclusiveness of its deliberations, would be significantly enhanced if the ten provincial premiers chose to head their own delegations to the new upper chamber. This might well occur for unusual events such as the opening of each Parliament, and the consideration of such crucially important measures as constitutional amendments. However, it would be most unrealistic to expect this to be a regular procedure. Premiers seldom have large blocks of time uncommitted and free

to spend debating the details of federal legislation. One can therefore assume that while a Premier would, in some sense, be the permanent ex-officio head of his own province's delegation, his personal attendance would be reserved for special occasions.

The same considerations would apply, with somewhat less rigor, to the senior cabinet ministers of the provincial administrations. The responsibility for the management of major provincial departments is similarly time-consuming. Similarly, no provincial premier is overly encumbered with large numbers of competent and reliable cabinet advisors for the collegial handling of the general administration of provincial affairs. Since their time is also at a premium, the attendance of senior provincial cabinet ministers at deliberations of the new upper chamber would have to be similarly discounted against the relevance of the matter being discussed to their own portfolio, and against the overall importance of the matter to the province. Students of the politics of the Soviet Union draw far-reaching conclusions from where specific individuals stand on the reviewing platform for the May Day parade; it may well become the stock in trade of future commentators on Canadian politics to gauge the interest of a specific province in any national policy by the calibre of the delegation it sends to debate it.

Junior cabinet ministers and government backbenchers would be other possible members of provincial delegations, although their participation would carry a lower degree of credibility given their comparative lack of formal status. However, there are significant interprovincial differences in the availability of individuals for such a function, as the following table suggests:

Table 6-2: Provincial Potential for Delegations

PROVINCE (election)	EXECUTIVE COUNCIL	GOVERNMENT BACKBENCHERS	MAJORITY	TOTAL LEGIS.
Newfoundland (79)	17	15	12	52
P.E.I. (79)	10	11	10	32
Nova Scotia (79)	17	14	10	52
New Brunswick (78)	19	11	2	58
Quebec (81)	26	54	38	112
Ontario (81)	25	45	15	125
Manitoba (77)	15	18	9	57
Saskatchewan (78)	19	25	27	61
Alberta (79)	29	44	67	79
British Columbia (79)	20	11	5	57

When the government enjoys only a small majority, it is unlikely that it could spare the services of any member, let alone a cabinet member of significant rank, for any extended period; no provincial government would value a good speech in the Council of Provinces above its own survival. It would be most unfortunate if the ability of a province to avail itself of the potential of representation in the new federal upper chamber were to depend on the closeness of the most recent provincial election.

Perhaps a more convenient arrangement would be for provincial delegations to include some provincial civil servants, as is now the case in federal-provincial conferences. It must be anticipated that there would be some degree of public resistance to such a suggestion. Many citizens are already wary of the spectre of "administocracy", and are more willing to accept elected members than appointed civil servants as legitimate representatives. This reluctance might be overcome or reduced by, say, a stipulation that although civil servants could be members of the delegation, formal votes could be cast only by an elected official. This is specifically contemplated by the Pepin-Robarts Report, which stipulates that provincial delegations must be headed by an individual of ministerial rank.

POWERS OF THE COUNCIL OF PROVINCES

The Council of Provinces is not intended to be a legislative body with exactly the same functions as the existing Senate; not only is its membership to be chosen in a different way, but it is to perform a distinctly different set of functions. This being the case, it implies that the powers of the new upper chamber need not be the same as the old one.

All the proposals agree that there is no need for a change in regard to the existing practices of responsible government. The government of the day must be responsible only to the House of Commons; the Council of Provinces, like the present Senate, should stand quite apart from this sort of question. As well, only the Commons, and not the Council of Provinces, may introduce a money bill. This would be implied in any event by the principle that a money bill may be introduced only by a minister of the Crown, as it is clear that cabinet members could not be selected from the membership of the Council of Provinces. All of the existing proposals take this principle for granted.

The Council of Provinces might well be accorded greater powers than the existing Senate in ratifying appointments to some national institutions. The most obvious example is the Supreme Court of Canada. Most proposals see the ratification of nominations to the national Supreme Court as a useful way to broaden the legitimacy of the Court, and the Council of Provinces as a logical agency for this. Major regulatory agencies such as the Canadian Transport Commission, the National Energy Board, and the Canadian Radio — Television Commission have been identified as agencies which should be staffed upon approval of a Council of Provinces by some (but not all) of the proposals.

All the proposals for a Council of Provinces recognize that the role of such a chamber with regard to the normal legislative process of the national government would vary depending on the subject matter of the legislation. The Council would have little power over "normal" national legislation, those matters falling clearly within the exclusive jurisdiction of the national government. Some proposals (such as the Canadian Bar Association proposal) argue

that the Council should have no role in the consideration and passage of such bills. Most of the other proposals envisage some role for the Council in such matters, but limit them to a simple suspensive veto (the term of such veto varying from 60 days to a full year). All the proposals agree that in such areas the obligation of the national government to act, and the need for a largely unfettered initiative in such action, is clear and unambiguous. The spectre of a national government pursuing national objectives in the area of exclusive national jurisdiction, but deadlocked by stubborn provincial government resistance, is not a plausible projection of the federal principle. At the same time, because national action in such areas can have profoundly differing impacts on different regions, many of the proposals want to provide for some degree of provincial government input into such policy proposals, and see a suspensive veto as sufficient to ensure sensitivity to provincial concerns without needlessly handicapping the national government.

The major activities of the Council of Provinces would be with regard to legislation which dealt with federal-provincial matters, a list which includes a number of items. First, there would be legislation in areas of concurrent jurisdiction, a rather small area at present, but one that might well expand if a Council of Provinces were created and proved itself effective. Second, there would be legislation dealing with the federal spending power, the declaratory power under Section 92(10)(c) of the BNA Act, and even the use of the emergency power that has been read into the "peace, order and good government" clause of Section 91. Most proposals envisage a complete veto power for the Council of Province in such matters pertaining to federal-provincial relations.

The Pepin-Robarts report hints at a larger and more sophisticated subdivision of legislative areas than the dichotomy suggested here, with different degrees of power and majority vote requirements for each, but these are hinted at rather than spelled out. As well, some proposals suggest a role in the process of constitutional amendment for the Council of Provinces, while others prefer an amending procedure outside the chamber.

THE COUNCIL OF PROVINCES AND PARTY POLITICS

The creation of a Council of Provinces would not occur in a political party vacuum, but rather a chamber of this nature would come into being against an established background of parties, governments, and voting patterns. The role that political parties would play in the operation of a Council of Provinces is highly relevant to an assessment of its practical impact on Canadian politics.

If each province is to receive equal representation, as was suggested in the summer of 1980 by officials of the provincial and federal governments, it is easy to determine the party composition of the Council that would have existed had the Council been created earlier. Table 6-3 presents this information for selected years since 1945.

Table 6-3: Provincial Administrations by Party, 1945-80

YEAR	LIBERAL	P.C.	N.D.P.	S.C.	OTHER
1945	5*	1	1	1	1
1950	6*	1	1	1	1
1955	4	2	1	2	1
1960	3	4	1	2	-
1965	4	4	-	2	-
1970	5	2	1	2	-
1975	3	4	2	1	-
1980	-	7	1	1	1

Legend: administration as of December 1st for each year
* Liberal-dominated coalition in Manitoba (1936-47) and B.C. (1942-52) counted as Liberal

It is clear that the Council of Provinces would be a house of minorities. For only eight years since 1945 (1945-51 and 1979) would a national government have faced a Council of Provinces in which there was a partisan majority claiming the same party label, and on two other occasions (1959 and 1970) exactly half the Council would have belonged to the same party as the government. The opposite extreme is found in 1980 and 1981, when there would not be a single delegation in the upper chamber claiming the same political label as the national government.

Since WWII, the "average" composition of the Council of Provinces on this basis of representation would have been about three Liberal delegations, three Conservative delegations, one CCF/NDP delegation, one or two Social Credit delegations and (for all but twelve years) a non-Liberal delegation from Quebec. On average, the ratio between government and opposition would have been a bit less than two to three. It is clear that national governments would have to rely on something other than partisan political loyalties to gain and keep the cooperation of the new upper chamber.

Since only one of the contemporary proposals has gone so far as to suggest equally weighted provincial votes in the Council of Provinces, it would seem more realistic to reconsider the partisan distribution within the upper house with unequally weighted provincial votes as well. As indicated in Table 6-1, the weighting varies somewhat from one proposal to another but within rather narrow limits. The specific weighting used to generate Table 6-4 is the only one that was advocated by two different proposals (Pepin-Robarts and the Ontario Advisory Committee). Again, the figures are for selected years since 1945.

If anything, the long-term outcomes under such a formula are even less reassuring than under a straight "one province, one vote" principle. Only once (1979) would a national government have enjoyed a situation where 50% or more of the votes in the upper chamber were controlled by provincial delegations bearing the same partisan label, the irony being that in this case the government itself was a minority. For seventeen more years (1945-51, 1957-62, 1964-5, 1970-1) that national government would find fellow par-

tisans forming the largest group, but short of a majority. At the other extreme, during the periods 1977-8 and 1980, a single partisan group other than the national governing party would have held half or more of the votes in the Council.

Table 6-4: Composition, Council of Provinces

YEAR	LIB.	P.C.	N.D.P	S.C.	OTHER	NAT. GOVT.
1945	22*	12	4	6	12 UN	Liberal
1950	26*	12	4	6	12 UN	Liberal
1955	14	16	4	14	12 UN	Liberal
1960	20	22	4	14	-	Conservative
1965	24	22	-	14	-	Liberal
1970	26	16	4	14	-	Liberal
1975	18	26	8	8	-	Liberal
1980	-	36	4	8	12 PQ	Liberal

Legend: * includes Liberal-dominated coalition in Manitoba (1936-47) and B.C. (1942-52)

In an "average" Council of Provinces formed on such a basis over the period since World War II, the voting breakdown would have been about 15 Liberals, 22 Conservatives, 10 Socreds, 5 New Democrats and 8 others (Union National and Parti Quebecois). The ratio between government and opposition would have averaged a little better than one to three. The long-term trends would have been gradually declining "third party" strength, drops in Liberal strength in the 50's and again in the 70's, and a long-term rise in Conservative provincial strength. The conclusion is an ironic one: it would seem that there has never been a time in the political history of Canada when a body like the Council of Provinces would be less palatable to the national government for political party reasons than since 1980. This assertion must not be made too apocalyptically, as politics is a strange kingdom where a week is a long time, but twenty-five years is only an interval.

However, the bonds uniting national and provincial political parties in this country are very weak, even when they share a common political label. It is a fundamental fallacy to regard provincial parties as simple extensions of the national party, and the short reign of Prime Minister Joe Clark is ample warning to those who would assume that the policies of the national and the provincial governments must fall into harmony merely because most of them share a single partisan label.

Several examples from within the past decade demonstrate this basic fact. The late Saskatchewan Liberal Premier Ross Thatcher carried on an extended feud with the leaders of the national party, while considerable antipathy marred the relations between Liberal Prime Minister Trudeau and Quebec Liberal Premier Bourassa. The lack of firm support from Alberta Conservative Premier Peter Lougheed and Ontario Conservative Premier Bill Davis contributed significantly to the fall from power of Joe Clark. The same schismatic tendencies are demonstrated in a different fashion by the fact that

the only two provincial premiers supporting Liberal Prime Minister Trudeau's patriation plans are both Conservative.

There is nothing surprising about this. Provincial governments must respond to the practical demands of holding office, and this forces shifting alliances or collisions with other governments responding to similar practical demands. Political party affiliation is only one of the factors a government must consider, and not one that ranks very high on the list. The cooperation between Alberta Premier Lougheed and Newfoundland Premier Peckford owes more to oil than to the Conservative party, and the squabbles between Newfoundland and Quebec grow from historical causes that would have their impact whatever parties were winning the provincial elections in the two provinces.

Had a Council of Provinces existed in 1979, a Conservative national government would have faced an upper chamber in which 60% of the votes were controlled by Conservative provincial governments. It is equally to the point that these votes would be controlled by seven different Tory premiers, and that the varying interests of these provincial governments would undermine any attempt to create a solid and persistent Conservative voting bloc. Provincial premiers could not simply answer "Ready, aye, ready" to a national leader, but would rather be forced to appraise every vote in the light of the needs and aspirations of their own province.

One possible effect of a Council of Provinces might be a closer meshing of national and provincial politics. Provincial premiers would be in a position to do more than complain about federal policies, which would create expectations among their own electorates that this power would be used to achieve positive results. If provincial opposition blocked popular national action, there could be a real price to pay in the next provincial election. As well, national parties could no longer stand by during provincial elections if the results could shift the voting balance in the upper chamber. There would be a pull towards increasing the links and the patterns of cooperation between national and provincial parties, although there is no reason to assume that these patterns must necessarily follow political party labels. Partisan links would be the least of the considerations that would guide the deliberations of a Council of Provinces.

PROCEDURAL DIMENSIONS OF THE COUNCIL OF PROVINCES

The Council of Provinces would be a legislative body, but not a debating chamber in the same sense as the House of Commons. The logical maximum number of points of view, and therefore of major speeches, on any question or any one stage of any measure, would be ten, rather than the 281[21] of the House of Commons. This fact in itself points to significant differences in the procedure of the two bodies.

---

[21] that is, every member excluding the Speaker.

The procedures of the Council of Provinces would probably involve plenary sessions dominated by provincial cabinet ministers (the rank varying according to the substance of the measure and its priority to the province) and used for formal statements and public pronouncements. This would be supplemented by numerous committee sessions (probably) dominated by civil servants that would do much of the "nuts and bolts" work of the Council. Like Commons committees, these committees would be concerned with practical details rather than with public posturing; unlike Commons committees, these committees would not be subject to the overshadowing reality of a party political majority that makes many final votes a foregone conclusion. It is from the practical work of the committees, as much as from the formality and voting power of the plenary sessions, that real benefits to federalism might be anticipated from a Council of Provinces.

Although the Council of Provinces format seems designed to create dramatic confrontation between the national government in the lower chamber, and the ten provincial governments in the upper chamber, its principal purpose is coordination rather than confrontation. First Ministers Conferences already provide ample opportunity for public confrontation and mutual recrimination, but a Council of Provinces would provide the potential for ongoing day-to-day input by provincial governments into the process of the making of federal policy. One way to encourage positive and constructive interaction would be to submit parliamentary bills to the Council of Provinces for comment *before* they have proceeded very far through the procedures for Commons approval (say, immediately after first reading). This would have a double beneficial effect. First, it would permit the provincial delegations to begin their deliberations, and to suggest changes, *before* the national government has publicly committed itself, and therefore before the acceptance of such suggestions would have the public appearance of a national government retreat in the face of provincial pressures. Second, instead of having upper house procedures take place *after* Commons consideration, the two would be taking place to some extent simultaneously, reducing the degree to which the new chamber would increase the time needed for the passage of bills into law.

COUNCIL OF PROVINCES: ADVANTAGES

i. The Council of Provinces device would build upon some current trends in Canadian politics by using provincial premiers in the process of regional representation. The First Ministers Conference is a clear demonstration of the role that provincial governments have been called upon to play in articulating regional concerns or demands relating to national policy. By building on this practice the Council of Provinces would extend present practices.

ii. The benefits of *elected* officials providing *regional* input in *national* policies could be accomplished without adding yet another set of elections.

The costs of such elections include at least two dimensions: the first in terms of the costs to public interest and information overload; and the second relating to the confused and conflicting patterns of mandates, real or alleged, that such multiple elections can generate.

iii. The Council of Provinces model provides the opportunity, not just for regional input into national policy through the means of provincial governments, but also for better and more extensive coordination of the policies of the several governments through the regular interaction in a formalized setting of the provincial governments and public services with their national counterparts. This holds out the promise of (but does not compel) the development of new patterns of national/provincial integration in the formulation and implementation of public policy.

iv. Power implies responsibility. Provincial premiers would, through the Council of Provinces, become involved in the national policy-making process on an on-going basis. But this role would require them not merely to criticize, but to formulate alternatives for which they would be politically accountable — they would be obliged to develop a national vision to match their national pretensions.

COUNCIL OF PROVINCES: DISADVANTAGES

i. The provincial premiers would acquire through their delegations in the upper chamber a considerable capacity to influence or even to block national legislation in some areas of governmental activity, and a capacity to delay national government activity in others. While this is obviously attractive to the premiers, it is less clear what would make it desirable to the national government, which would gain only the off-setting advantage that its legislation would not be counter-balanced by subsequent provincial legislation or threatened by legal battles in the courts.

ii. The provincial premiers clearly have a mandate to act in spheres of provincial jurisdiction. It might be argued by extension that this mandate also covers some areas where national and provincial policies and concerns necessarily overlap, although this would seem to vary in its substantive content from province to province. For example, the Alberta government probably has a clearer mandate than that of Prince Edward Island to speak out on the National Energy Program. It is hard to push the provincial government's mandate much further than this, or to suggest that a provincial premier has any necessary right to have a say, much less a suspensive veto, over every detail of matters within national jurisdiction. The provincial premier is an elected representative of the people, but this authorizes him to speak for them only within the area of his mandate, not on everything.

iii. The necessary effect of formally and constitutionally sub-dividing or multiplying jurisdictions must be a significant increase, at least in the short run, of litigation to clarify the precise boundaries of the various categories. There must always be cases in which it is unclear whether a given matter is

subject to a Council of Provinces veto, or whether it is to be considered by the full Council of Provinces or the dualist committee. Since the point at issue would be the legality of a piece of national legislation, these questions traditionally have been resolved by the Supreme Court. This, of course, is in addition to the long-standing problems over the division of powers between national and provincial governments, which would themselves be aggravated if any formal enhancement of the areas of concurrent jurisdiction resulted from or accompanied the creation of the new body.

iv. If a provincial election campaign coincided with a controversial national policy facing a badly divided Council of Provinces, it is possible that the national policy alone could determine the outcome of the provincial campaign. For example, it is not impossible to imagine a Nova Scotia election being dominated by the question of the future deposition in the Council of Provinces of a new equalization formula, with purely provincial issues being put to one side. The political limbo into which this could push the mandate of the new provincial government for the resolution of such purely provincial concerns is a possible drawback of the device.

But there is a more fundamental flaw in the design of the Council of Provinces as a mechanism for regional representation, and the clarification of this flaw goes right to the heart of the concept of regional representation.

The assumption in the Council of Provinces model is that the best agency for the articulation of regional concerns is provincial *governments*, who are present in the Council through their delegations. The provincial government becomes, as it were, the neck in the hourglass, both exercising its own jurisdiction, and interacting in the new chamber with the national government and other provincial governments on relevant matters.

It is both true and obvious that provincial governments represent the people of the province in a number of very crucial respects. The authority of the provincial government rests on the confidence of a majority of the members in the provincial legislature, and is therefore as democratically unimpeachable as the legitimacy of the national government. The durability of provincial governments (on average, over the last thirty-five years, a provincial government going into an election campaign enjoys 4-1 odds *against* being defeated) clearly implies that they enjoy the continuing support of their electorate, and public opinion polls repeatedly confirm this confidence.

But the representative mandate of the provincial government is clearest for those matters coming completely within provincial jurisdiction. By extension, it is clear that this legitimacy reaches into matters of concurrent jurisdiction, and into those areas where jurisdiction is so split or unclear that effective policies require coordination between the activities of the two levels of government. Finally, it seems implicit in the notion of federalism that the provincial government has a legitimate role to play in the process of constitu-

tional amendment, whether this participation is channelled through the Council of Provinces or through some other mechanism.

It is by no means clear that the provincial government has any solid claim to represent the people of the province in areas of national jurisdiction. The further the Premier strolls from provincial jurisdiction, the weaker his claim to a strong and legitimate representative role. The Council of Provinces recommendations all recognize this fact by giving the body strong powers with regard to concurrent jurisdiction, but only a suspensive veto in legislation that falls entirely within the federal government's heads of power.

Yet the need for effective mechanisms to promote regional sensitivity remains real within the processes of purely *national* policy. Indeed, it is only through such mechanisms that the policies of the federal government can become truly national in their scope and their degree of acceptance. The weakness of the Council of Provinces model as a solution to the problem of regional representation, is that it is precisely at this point that the voice of the body falters, its strength diminishes, its legitimacy becomes dubious. The problem is not that a Council of Provinces could not accomplish regional representation, but only that it must leave the job half done.

There is a second logical flaw in suggestions that would channel the regional representation function entirely through provincial governments. In the context of contemporary Canadian politics, it is obvious that the forces of separatism naturally tend to focus upon the provincial governments, with the Parti Quebecois as the most obvious example. It is also clear that "provincialists", those who favor more power and a stronger role for provincial governments, should also direct their activities and attentions toward the provincial government. But there must also exist a third group, whose view is wider and who desire a policy of national scope under the authority of a national government, but who detect inequities and unfairnesses within existing or proposed national programs that disadvantage the people of their region. To put the regional representation role entirely in the hands of the provincial governments would require that this group as well, in its desire for regionally sensitive national policy, should direct its attention and its efforts toward the provincial government. It would still remain the case that the very real and strong forces of regional identity in this country would focus *entirely* on the provincial government and would be denied any natural rallying point within the institutions of the national government, a monopolization that we regard as unnecessary and undesirable.

The alternative is to provide an institution within the national government which is designed to facilitate the articulation of regional concerns within the process of national policy-making, and which is given the power to do something about these concerns. It would not be an intergovernmental body, but rather a regional body within the national legislature.

Does this imply that there is no role for a Council of Provinces? Far from it. The need for intergovernmental cooperation and coordination of policies

is increasingly obvious in this age when positive government is impelled toward extensive activities in an increasingly complex society. An institutional focus and a formal decision-making mechanism for this process would be highly desirable, and this a Council of Provinces would be ideally suited to provide.

Regional representation is not all of a kind. At one level, and with regard to some governmental activities, the need is for the representation of provincial and national governments in an intergovernmental body. At another level, and with regard to other governmental activities, the need is for an institution within the national government that represents the people of the region more directly, and that speaks most strongly on exclusively *national* policy.

It is often said that the only thing more misleading than a lie is a half-truth, and this is the status that we would have to accord to the suggestion that a Council of Provinces is an adequate instrument for regional representation. Such a body would clearly be an improvement over the present void in effective mechanisms for regional representation, and it would provide invaluable service in some of the areas in which regionally sensitive intergovernmental cooperation is indicated. However, of itself, the Council of Provinces would still leave unaddressed one dimension of regional representation, a dimension that we feel must not be overlooked.

2. THE FEDERAL COUNCIL

The proposals of the Quebec Liberal Party, released in January, 1980 and entitled "A New Canadian Federation" (popularly referred to as the Beige Paper) proposed the creation of a Federal Council to consist of provincial delegations.

This body is often treated as an upper chamber masquerading under another name. The Beige Paper specifically denies this interpretation, and it is our contention that it is more useful to take this declaration at its word. In its treatment of the Senate, the Beige Paper regards that body as having operated (even at its best) as a chamber of second reflection, and never having performed a useful or creditable role with regard to regional representation. Its recommendation regarding the Senate constitutes the pithiest part of the whole report — "The Senate should be abolished". Almost alone among the major sets of constitutional recommendations of recent years, the Beige Paper contemplates a unicameral national legislature.

The Quebec Liberal Party proposals go on to suggest the creation of a Federal Council consisting of provincial delegations. This has been enough for many commentators to assimilate this portion of the proposals to the larger body of constitutional recommendations supporting the Council of Provinces model[24] as the appropriate forum for the resolution of regional differences.

---

[24]See section on page 67

Such an assimilation is facilitated by an unfortunate comment within the report itself suggesting that the "mechanisms" of the Federal Council are "consistent" with those proposals embracing a Council of Provinces. However, there are fundamental and important differences between the two proposals; for an obvious example, the Council of Provinces model does, and the Beige Paper does not, contemplate the creation of a new debating chamber within the national parliament.

MEMBERSHIP

This body is to be called the Federal Council, conceived not as a regular legislative body but as a special intergovernmental institution. It would consist of delegates from provincial governments charged with expressing the political policies of their respective governments. There is no provision for membership for a delegation from the national government, although the national government may make representations before the body in defense of its proposals. Each provincial delegation would vote as a bloc according to instructions from its government, and the representation assigned to each province[25] would reflect the relative size of that province with some skewing in favor of the smaller provinces. A suggested example of the composition of such a council is as follows:

Prince Edward Island	2 delegates
Newfoundland	3 delegates
New Brunswick	4 delegates
Nova Scotia	4 delegates
Saskatchewan	5 delegates
Manitoba	5 delegates
Alberta	8 delegates
British Columbia	9 delegates
Ontario	20 delegates
Quebec	20 delegates
TOTAL	80 delegates

The P.C.I. (population concentration index) of the Beige Paper proposal is 19.88. Although the territories are acknowledged as having their own interests and issues and therefore a legitimate entitlement to full voting membership on the Council, it is not indicated how this would be put into practice or what size of delegation it might justify. While it would be unfair to attach preemptive importance to the specific numbers (it is, after all, only an example of possible representation on such a body), it is significant that the numbers are assigned arbitrarily (even eccentrically) to specific provinces rather than being allocated on the basis of a formula that would allow for the shifting statuses of different provinces over time.

[25]or, more correctly, the weighting assigned to each provincial vote, this being a confusion that is not unique to the Beige Paper proposals.

POWERS

The Federal Council is not an upper chamber of a bicameral national legislature along the lines of other federal Senates, but rather a special "federal" (that is, intergovernmental) institution. Therefore, it is not intended routinely to consider any and all national legislation as part of the normal legislative process. Only certain kinds of actions on the part of the national government are considered appropriate for consideration by the Federal Council, and these are divided by the Beige Paper into two categories — ratifying powers, and advisory powers.

The Federal Council would have the power to ratify:

i. any exercise of the national government's emergency power.

ii. any exercise of the national government's "spending power" in areas of provincial jurisdiction.

iii. any intergovernmental delegation of powers.

iv. any treaties concluded by the national government in fields of provincial jurisdiction.[26]

v. international and interprovincial marketing programs of agricultural products.

vi. the appointment of judges to the Supreme Court of Canada, and of the Chief Justice of that Court.

vii. the appointment of presidents and chief executive officers of central government bodies and Crown corporations of major importance.

The Council would also have a special commission to advise the national government on certain matters, with the understanding that although such advice could never bind or commit the national government, it might facilitate greater sensitivity to regional concerns in national policy. These matters would include:

— national budgetary, monetary and fiscal policies
— mechanisms and operating formulas used for equalization
— any and all matters deemed by the Council to have significant regional or provincial impact

The Council would also contain a permanent "dualist committee" consisting of an equal number of French- and English-speaking delegates (the former not being exclusively equated with Quebec, since 20% of the French-speaking members of this committee would come from outside that province), possessing powers parallel to those of the whole Council relating to any national government proposals that affect the cultural duality of the federation. It would ratify any national legislation on linguistic matters and the appointment of presidents and chief executive officers of national bodies of a cultural nature, while possessing the powers and the "precise mandate" to ensure that the national public service reflects Canada's dualism at all levels.

[26]the implementation of such treaties would still rest within the legislative competence of the individual provinces, rendering problematic the significance of such ratification.

OPERATIONS AND PROCEDURES

The Beige Paper proposals are extremely vague regarding the actual operations of the Federal Council. Since it is not a part of the national parliament, it is not subject to extended and co-terminous sessions, nor is it a routine and necessary part of the process of passing national legislation. The difficulty of deciding which laws or treaties are to be subject to one or the other of the Council's jurisdictions is briefly conceded by the paper. At one point, it is suggested that a joint committee of the Council and the House of Commons have the power to decide (not merely to recommend) on the reference of specific matters. At other times, the paper speaks of measures being submitted by the national government. Both procedures leave something to be desired. The first puts in the hand of provincial delegates and opposition members a considerable potential for the arbitrary disruption and obstruction of government business; the second suggests an opportunity for the national government to ignore or by-pass the scrutiny of the Federal Council whenever it feels it desirable to do so (which may be precisely when it should be least desirable for it do be able to do so). One suspects that the matter would go the courts for a final decision as to which piece of legislation or treaty comes under which category whenever the question is at all controversial, which could conceivably be most of the time. In such a case, the drafting requires considerably more precision than appears in the paper.

The procedures of the Federal Council when a matter does arrive before it are even more vague. It is not clear where the Federal Council is to sit, or who calls it into session, or how long its sessions last, or who decides how long its sessions are to last, or whether it has any time limit for considering the ratification of any particular piece of legislation or nomination. It is not clear whether its decisions are to be based upon a simple absolute majority, or a majority vote of those present and voting, or an unusual majority, or a regionally-specific majority, or different majorities for different sorts of issues (which again suggests the possibility of further recourse to the courts to certify the classification of specific items). It is not clear whether the Council could make ratification contingent upon some modification of the measure, nor is it clear how ratification affects the legal status of an act of Parliament — is it conceived as occurring before royal assent? before proclamation? or as a retroactive annulling action similar to a Supreme Court ruling?

PARTISAN DIMENSIONS OF THE FEDERAL COUNCIL

With regard to party affiliations and their implications, the Federal Council would function very similarly to the Council of Provinces, and we have considered this matter earlier. It must be conceded that the national government would seldom face a majority in the Federal Council that would share the same political party affiliation, although the situation would seldom be as extreme as today, when the Liberal national government would not face a single provincial Liberal government in such a chamber. We make such an

observation only to deny that it would carry any preemptive significance for the operation of a Federal Council. Just as similar party labels do not ensure harmony and cooperation between a national and a provincial government, so different party labels do not ensure hostility and obstruction. The constitutional controversy of 1980-81 adequately illustrates this principle, with a Liberal national government receiving full support for its initiatives from two Conservative provincial governments, but not from five others. Provincial governments of whatever political party are concerned with promoting and protecting the interests of the people of that province, not with blindly serving the political fortunes of a national party that shares the same label. Party political considerations would rank very low on the list of imperatives that would guide the operation of a Federal Council.

ADVANTAGES

i. It is easy to see how the Federal Council would operate, and how it would fit into the existing patterns of Canadian politics. It is commonplace to observe that whenever the national government acts in direct conflict with several provincial governments in the extensive grey areas that exist between the clearly demarcated areas of exclusive jurisdiction, it incurs a certain political cost. The Beige Paper proposal would create a formal institution with legal power in place of this rather vague set of political considerations, and a legal barrier instead of a political disincentive. It would constitute a symbolic recognition of the status of provincial governments, and would provide those governments with a means of protecting themselves from what some premiers have termed federal intrusions.

ii. Provincial participation in the appointments of the members of various federal government bodies, including the Supreme Court, would both enhance the status of such bodies (the Supreme Court, for example, is subject to considerable criticism for some of its judgments simply because its appointment procedure is so unilaterally in the hands of the national government), and permit the provinces to protect themselves from appointments to such bodies that they would see as threatening.

iii. Provincial governments now have some measure of involvement in national policy concerning areas of crucial significance to all governments through the institution of the First Ministers Conference. Making such involvement more formal and more routine would enhance the opportunities for the coordination of policy between the levels of government.

iv. The operations of the dualist committee of the Federal Council would be a continuing guarantee to the linguistic minority both of the protection of their rights, and of the enhancement of their role within the institutions of the national government. Nor would the role of this committee be merely a passive one, as it would also have the mandate to ensure that the national public service adequately reflect this Canadian dualism.

DISADVANTAGES

i. The Federal Council is insufficiently sensitive to the concerns of the less populous regions because its basis for representation is so heavily skewed toward the heavily populated provinces of central Canada. The delegates of all the other provinces combined could not outvote Ontario and Quebec; this single fact demonstrates how little the Council was designed as an instrument of regional representation, just as its dualist committee reveals the central concern of the proposal.

ii. The Federal Council falls short of its own intended purpose by creating an intergovernmental body that leaves out one important level of the federal polity, namely the national government itself. The Beige Paper speaks of the need for "consultation" between the two levels of government, of "ensuring a better cohesion" in governmental policies, of "encouraging collaboration and cooperation" in the interests of "intergovernmental consensus". But it is difficult to see how this cooperation can emerge from a new "intergovernmental body" in which only provincial (and possibly territorial) governments are present through their delegations, and which can respond to national initiatives only by approving or rejecting them after they have passed through the national parliament. It is a strange dialogue that is contemplated.

iii. The positive features of the operation of the Federal Council are essentially tentative: *perhaps* dialogue and accommodation would emerge, *perhaps* national legislation would be tailored more to meet provincial priorities, *perhaps* the advisory recommendations of the Federal Council would prove the basis for a series of new policy initiatives. Perhaps. But the negative features of the Council stand clear and unambiguous; whatever else it might become, it would be a body that would permit the provincial premiers to say "no" more effectively. Essentially, the Council is a body with the power to say "no" in the hopes that people would therefore stop generating policy that deserves to have "no" said to it. It is not in itself a body with the power or the mandate to develop national policy. It might in the end prove to be merely yet another impediment to national action.

iv. The concept of the Federal Council corresponds to the contemporary image of Canada, in that it is now (but has not always been) the case that the inhabitants of certain parts of this country regard the national government with a certain amount of suspicion and even hostility, and look to the provincial governments both to provide a wide range of services and to articulate the provincial viewpoint on national policy to protect them from the national government. The Federal Council would enshrine this conception in formal constitutional garb, and assign it appropriate power for the role. However, especially in a country like Canada, nothing is constant but change; whatever federalism in Canada will look like in fifty or a hundred years, we can be sure it will not look the way it does today, and our reforms must therefore be flexible enough to accommodate the changes.

v. The uncompromisingly provincialist overtones of the Federal Council create a serious practical impediment in the sense that they give the national government no incentive whatever to accept the reform. Whatever else might emerge from such an institution, in the short run the provincial governments would acquire an absolute veto over national government activities in a number of significant areas, and the national government would lose the initiative and the capacity for action it now possesses. It is fairly clear why provincial governments or governments-in-waiting should regard such an augmentation of power as desirable;it is less clear how the national government is to be persuaded.

vi. The need would remain for regional sensitivity within purely and exclusively national policy, and this is an area where the authority of the Federal Council is the most dubious and restricted. Like the other proposals for intergovernmental bodies as a means to regional representation, as we have discussed on page 81, such suggestions would leave an important dimension of regional representation unaddressed.

3. INSTITUTIONALIZING THE FIRST MINISTERS CONFERENCES

DETAILS OF THE PROPOSAL

Some commentators suggest possible benefits to the formal institutionalization of the First Ministers Conference. At present, such meetings have no legal or constitutional status, although this in no way detracts from their political significance or their usefulness in resolving certain types of problems. To exaggerate only slightly, a First Ministers Conference is simply a casual get-together of eleven individuals who happen to be the first ministers of their respective governments. Of course, considerable practical benefits may (or may not) flow from such a gathering, but technically the body itself is informal and consultative, rather than institutionalized and decision-making.

In a political system that employs parliamentary forms at both national and provincial levels as the fundamental principle for the organization of its government, the primary agency for the co-ordination of the policy of the various governments must be one that brings together the political cabinets of those governments. In other political systems,[27] or for that matter at an earlier time within the Canadian political system, a certain amount of such coordination could be carried out in an informal and decentralized level between professional administrators in the various civil services. However, the tendency of a parliamentary system is to centralize effective authority and accountability within the cabinet, and recent trends in all the provinces point to the development of structures and support staff to assist the provincial cabinet in the effective oversight and coordination of government policy. To a greater

[27] for example, the Congressional system, where the diffuse nature of political authority and accountability generates greater autonomy on the part of administrators.

extent than may have been the case in previous decades, the co-ordination of provincial policy with federal policy now requires the active cooperation of the provincial cabinets, and cannot be carried on through the autonomous operations of professionally-oriented experts at a lower level within the respective civil services.

At the same time, it is a political truism that to an ever-increasing extent, the effective operation of both federal and provincial policies requires extensive cooperation and coordination. Given the tremendous expansion of government activities in this age of positive government, especially since World War II, the division of powers in Part VI of the British North America Act is only a starting point in understanding the effective responsibilities of the several governments, and not in any way a complete story. It has been suggested that *any* government contemplating *any* program can find some plausible constitutional peg on which to hang it; while this may be something of an exaggeration, and while the Supreme Court may not always choose to be convinced when it is called on to pass judgment, this does demonstrate a considerable grey area in which the two levels of government can operate either in consultative cooperation or in frustrated mutual obstruction.

The British North America Act of 1867 listed only two areas of concurrent jurisdiction (agriculture and immigration), to which a third (old age benefits) was added by amendment in 1951. In practice, however, the existence of these extensive grey areas in which both levels of government may find it necessary to act creates much more far-reaching areas of "de facto concurrent jurisdiction", and at least one constitutional expert[28] suggests that a highly desirable tack for constitutional change would be the formal extension of such concurrent jurisdiction to very large areas of governmental activity. A First Ministers Conference of more formal status and procedure would provide an appropriate agency for dealing with the coordination of governmental activities within these areas.

Some changes would be necessary in the present format of the First Ministers Conferences before they could satisfactorily fulfill a more formalized and institutionalized role. For one, they would have to take place more regularly, or in response to a more broadly-based initiative, than is now the case. A forum that is called together at the time and place chosen by only one of the eleven participants, and not summoned when he does not wish it to be regardless of the feelings of the other ten participants, suffers obvious liabilities as a credible structure for effective and ongoing coordination of policy. *Either* the Conference should meet regularly at stated intervals, *or* it should be convened at the request of a stated number of the eleven first ministers, with no one of them possessing an effective veto.

The agenda poses several problems. On the one hand, the setting of an

[28] W. R. Lederman, "The Concurrent Operation of Federal and Provincial Laws in Canada", *McGill Law Journal* (1962-3).

agenda can confer considerable advantages and benefits; both in what is included or excluded, and in the order in which things are considered, a unilateral initiative for the setting of an agenda gives the initiator a preferred status. On the other hand, a completely open procedure for agenda setting may generate an excessively large agenda with obvious negative implications for effective decision-making. A procedure parallel to that suggested above, where some minimum number of first ministers could put any item on the agenda, seems indicated. (Perhaps a similar number should be able to remove the item from the agenda if they wished.) Certainly the agenda question would need the most careful consideration to avoid unnecessary obstacles to the effective working of the Conference.

Federal chairmanship poses further and related problems, and cannot be left standing as the regular practice. The chairmanship could rotate among the eleven first ministers, or among the ten provincial premiers; or there could be a co-chairmanship arrangement similar to that used by the constitutional committee of ministers meeting during the summer of 1980.

An institutionalized First Ministers Conference would require its own secretariat, possibly through secondment from national and provincial civil services, but on a fairly long-term basis. The clerical requirements alone of such a body meeting on a regular basis would be fairly extensive, besides which it might be desirable to provide executive and research staff to the Conference and its committees in preference to expecting first ministers to bring their own on an ad hoc basis.

Most critically of all, a formalized First Ministers Conference would require some independent fiscal authority. With few exceptions, all important governmental activities require money, and gaining an independent fiscal authority would be the clearest sign that the Conference had evolved from a purely consultative body to a decision-making body of independent capacity. At the same time, such a move would be both controversial and difficult, the more so in a time when most governments are feeling the strains of reduced fiscal capacity themselves.

ADVANTAGES

i. An institutionalized First Ministers Conference is a device that meshes well with the logic and dynamics of parliamentary government. We believe that it can be taken as a given that parliamentary government and the centralization of effective authority that it entails will remain (for better or worse) the fundamental operating principle of politics and government in Canada. Therefore, any mode or mechanism of regional representation that is to be effective and non-disruptive of normal governmental procedures must accommodate and complement this principle.

ii. Because it meshes with the principle of responsible government, and because it acknowledges the responsibilities and the powers of the first ministers, an institutionalized First Ministers Conference does not threaten

their positions, or their capacities for promoting the interests or forestalling the concerns of their provincial constituents. It is therefore more likely than many schemes to engage their active cooperation.

iii. An institutionalized First Ministers Conference would yield its benefits at minimum risk and dislocation. The First Ministers Conference already exists; what is proposed is not the creation of a new institution, with the ripple effect this might generate in terms of implications for other institutions or processes, but the formalization of existing procedures and their extension to further areas. The device would build on and extend practices that have already been accepted by all the relevant actors. It therefore offers none of the uncertainty or disruption inherent in complete innovation.

iv. An institutionalized First Ministers Conference would represent a gradualist approach to constitutional change. Since it is a small step beyond existing practice, it neither presupposes nor prevents future evolution towards greater inter-governmental cooperation and co-ordination. Itself a flexible adjustment to changing political circumstances, it suggests an openness to the accommodation of future changes in the political climate.

v. The "one-in-eleven" logic of a First Ministers Conference is a reassurance to the less-populated regions and their governments that their ideas and concerns will receive a full airing, and not be buried or shunted aside in the interests of representation by population.

DISADVANTAGES

i Precisely because an institutionalized Conference builds on the existing structures of the First Ministers Conference, it inherits the flaws and defects of that body. Specifically, it is a procedure which largely by-passes or nullifies the legislatures at national and provincial levels. Even when later legislative approval is required to implement the intergovernmental accords, the difficulties of resubmitting the package for renegotiation limits the effectiveness of concerns expressed in the legislative forum, and faces the legislature (national or provincial) with very much of a fait accompli. A major cost of such executive-centered techniques is a further erosion of the effectiveness of our elected representatives, both provincial and national, in articulating our concerns and facilitating governmental responsiveness to them.

ii. The existing First Ministers Conference is a committee on setting priorities or on responding to crisis situations. It exists for an exchange of views, hopefully (but not inevitably) issuing in more extensive cooperation and coordination in desired areas. It is not a decision-making body, as it lacks any process whereby formal votes can generate a binding outcome. At best, it can only encourage cooperation, not compel it; obviously, any dissenting government can simply decline to act on the "decision" which excluded it, or to present ratifying legislation to its own legislature. The indeterminate nature of Conference "decisions" causes problems even now (as witness the abortive meetings on the Fulton-Favreau and Victoria Charter constitutional for-

mulae), and these would be aggravated and extended by any more extensive use of the Conference.

iii. The price of a firmer decision-making procedure might very well be the erosion of the acceptance which the First Ministers Conference has heretofore enjoyed. It is one thing for a government to enter a conference with the intention of sharing views, participating in a discussion, and seeing if a tolerable common position can be worked out. It is quite another matter to accept in advance the possibility of having an undesired solution with significant policy implications forced upon it by a majority vote. Neither national nor provincial governments could face with equanimity the picture of returning to the provincial legislatures obliged to present and defend policies that it had publicly and vehemently argued against.

iv. The areas of constitutional concurrent jurisdiction and de facto concurrent jurisdiction are large, but not all-inclusive, and the First Ministers Conference, like the other proposals that would accomplish regional representation through intergovernmental bodies, would have little to say about exclusively *national* legislation. As we have indicated on page 81, this leaves a significant dimension of regional representation unaddressed.

VII. SENATE REFORM

Many countries in the world possess a bicameral legislature; that is, a national legislature which contains not one but two legislative chambers that participate fully in the passage of national legislation. This duplication, and the loss of time that it implies, is justified in terms of the special functions and values served by the second chamber.

One value is the reconsideration in detail of proposed legislation, the notion of a "chamber of sober second thought". The extra time involved in repassage through a second chamber is justified if it results in national legislation that is better and more carefully drafted. The evidence suggests that the Canadian Senate performs creditably in this regard.

In a federal system, however, the existence of a second chamber takes on special and highly significant overtones. It is axiomatic in most federal constitutions that if the lower chamber of the national legislature represents the citizens on the basis of *population*, the upper chamber represents them on the basis of the *province* (or state, or canton, or Lande) that they live in. Federal upper chambers normally represent an institutionalized mechanism for the accommodation of regional concerns.

The Canadian Senate was designed with precisely such a purpose in mind. Indeed, the Fathers of Confederation spent more time working on the design of the Senate than on any other part of the Confederation settlement. They attempted to direct the body towards a sensitivity to regional questions by giving equal representation to the three (later four) "Divisions" into which they saw the country being divided. They decided against an elected Senate in favor of appointment, at least partly on the basis of the example of the British House of Lords, then a most prestigious and credible body, which it was hoped the Canadian Senate would be able to emulate.

However, the Canadian Senate did not evolve into a body of the status or prestige of the 19th century House of Lords (or even, for that matter, of the 20th century House of Lords). And it failed to act in any effective way as a body especially sensitive to regional concerns and willing to act decisively to protect them. In terms of formal legal power, the Canadian Senate is as powerful as any upper chamber in the world; in its actual performance, especially regarding regional concerns, it has proved to be the weakest.

The contrast between the Canadian Senate and the upper chambers of other federal systems is one reason for the constant appearance of Senate Reform proposals as part of proposed constitutional change. This preoccupation is entirely appropriate. We will consider some of the recent proposals for

Senate reform, consider their implications, and assess their adequacy for the purposes of regional representation.

1. THE HOUSE OF FEDERATION

In June, 1978, the government of Canada introduced into the Canadian Parliament Bill C-60, entitled *The Constitutional Amendment Bill 1978* which, inter alia, contemplated the creation of a new upper chamber that would be called the House of Federation to replace the existing Senate. That bill was never enacted, and the method by which the government proposed to create the House of Federation was found by a unanimous Supreme Court to be unconstitutional. At the same time, it remains the case both that no other proposal for upper chamber reform has come so close to actual existence as the chamber considered by that legislation, and that the government that proposed such a body is still the government of Canada. For both these reasons, it seems worthwhile to consider briefly the central features of the proposal and to assess its viability as an instrument of regional representation, although it is not our intention to discuss all the arguments that raged around Bill C-60.

BASIS FOR REPRESENTATION

As in most proposals, the basic unit of representation is the province. However, Bill C-60 does not contemplate equal representation by province, but rather generates a sliding scale for representation in the House of Federation as follows:

Newfoundland	8 seats
Nova Scotia	10 seats
New Brunswick	10 seats
Prince Edward Island	4 seats
Quebec	24 seats
Ontario	24 seats
Manitoba	8 seats
Saskatchewan	8 seats
Alberta	10 seats
British Columbia	10 seats

There were also to be two representatives for the territories, selected by the national Parliament on the basis of the most recent national election results.

The allocation seems to be absolutely arbitrary. It abandons the Divisions of Section 20 of the British North America Act, but it does not create a new set of divisions in itself, nor adopt a sliding scale of representation based on population, nor opt for equal representation by province. Basically, it seems to take the existing Senate, give two extra seats to three provinces (Newfoundland, Manitoba and Saskatchewan) and four extra seats to two others (Alberta, British Columbia) without explaining either why it is these

provinces gain, why no provinces are to lose, and where these numbers of new seats came from.

In very rough and practical terms, the new allocation would continue to give the four eastern provinces as a group more representation than either of the two central provinces, and would increase the representation from the vocally dissatisfied western provinces by 50%, but it is not easy to discern the formula that was applied to get this result.

MEMBERSHIP OF THE HOUSE OF FEDERATION

The membership of the House of Federation for each province is further divided into two equal groups. One group is to represent the provincial political parties in proportion to the share of the popular vote that they gain in the most recent provincial election. The other group is to represent the national political parties in proportion to the share of the popular vote that they gained in that province in the most recent federal general election.[29]

Members of the House of Federation would therefore serve indefinite terms depending upon the timing of the elections whose results they represented. Some critics suggested this as creating a "revolving door" chamber, its deliberations interrupted by the constant departure of some members and the arrival of new ones. Both the longevity of Canadian governments at provincial and national levels, and the meliorating effects of proportional representation over "winner take all", would substantially reduce the extent to which this factor would affect the operations of the House.

POWERS OF THE HOUSE OF FEDERATION

The House of Federation was not contemplated as a body possessing anything approaching the legal power of the present Senate. The proposed legislation barred it from originating any money bill, and implied that it could not amend such a bill. Ordinary legislation that was refused passage by the House of Federation would not become law for 60-120 days, and for urgent legislation a two-thirds vote of the Commons would bypass the upper chamber altogether. The most extensive powers of the new body would apply to "measures of special linguistic significance". Such measure would be subject to a double-majority (of both French- and English- speaking members) for passage through the upper chamber, and they may become law over a negative vote in the upper chamber only if they are repassed by the Commons by an unusual majority. Finally, the House of Federation would ratify national government nominations for the appointment of Supreme Court judges, ambassadors, and the heads of some administrative agencies and Crown corporations.

---

[29]It was widely argued by critics that the sections of the Bill indicating how specific individuals were to be selected to perform this representation was defective and would have given considerable scope for manipulation by the eleven governments; however, since this could easily have been corrected, it would seem beside the point to stress it.

This list of powers suggests two observations. First, the House of Federation was contemplated, not as a body possessing great legal powers, but rather as a forum possessing considerable powers of publicity, able at most to embarrass a national government rather than to block it on matters deemed important to the new upper chamber. To the extent that modern legislatures normally respond to executive initiatives and do so by drawing public attention to dubious or controversial sections of proposed legislation, this seems both realistic and potentially useful. To the extent that the answerability of the executive, and the degree to which the public pays attention at all, is dependent upon at least a potential of real legal blocking power, the proposal goes much too far in the direction of a pure and simple publicity body.

Second, the fact that the House of Federation is given its only real powers with regard to "measures of special linguistic significance" suggests the real central purpose of such a body, and the main set of political concerns it was created to address. A linguistic minority would achieve under the legislation a significant (although still not a complete) blocking power over objectionable or threatening legislation, and to this extent the House of Federation would be a credible focus for the attentions and activity of this group. A regional minority, however, would be handicapped both by the absence of a double majority feature and by the lesser powers of the chamber in drawing attention or redress to its objections, and the credibility of the House of Federation in addressing this category of problems is correspondingly reduced.

THE HOUSE OF FEDERATION AND PARTY POLITICS

It is completely possible that the House of Federation, if it ever came into existence, would be the most politically diverse legislative body in the world.

We have already argued that provincial parties are not usefully viewed as provincial wings of the national party carrying the same name, but possess a considerable political independence that reveals itself most strikingly when both parties form the government at the two levels. Although there would be Conservatives in the House of Federation from eight of the ten provinces as well as from the national party, they would form not one monolithic group, but nine different groups. It has been estimated that in 1978 the House of Federation would have contained representatives from thirty different political parties (four federal and twenty-six provincial). The largest single group would have been the federal Liberals with 25 members (just over one-fifth of the total body), and there would have been nine different parties (all provincial, and including the governing party in the province of Prince Edward Island) represented by single members.

The task of building a stable voting coalition in such a disparate body is truly daunting; even the Italian national parliament is not in the same league

with such bewildering political diversity. It is small wonder that the proposal contemplates only a very limited degree of formal legal power to such a chamber. The need to pilot all national legislation through such a political pot-pourri would be politically paralyzing if a negative vote in the chamber meant an absolute veto. The very diversity of the chamber would undermine one of the first prerequisites of an effective political institution, namely *accountability*. If a measure failed to gain the approval of the House of Federation, which of the 30 political parties in the chamber would get how much of the blame? In the House of Commons, the public always knows who to blame; in the House of Federation, it never would, and this in itself generates something of a political limbo for the proposed new body.

A measure of ongoing political party involvement in the upper chamber would be guaranteed by the fact that the proposal explicitly contemplates the appointment of cabinet members from the House of Federation. The tenure of members of the House of Federation would be (indirectly) based upon popular elections, so their appointment to the Cabinet would suffer none of the anomalies or handicaps of present Senators. However, the status and credibility of Cabinet members would be undermined in a second way that is potentially as significant: they would defend cabinet policy, not in the Commons where the life of the government was (at least theoretically) at stake, but in the House of Federation where (for all legislation save measures of special linguistic significance) nothing is at stake save a short period of delay.

ADVANTAGES OF THE HOUSE OF FEDERATION

For all the much-publicized criticism that the Constitutional Amendment Bill 1978 drew, its proposed House of Federation was not without some real advantages as a chamber for the articulation of minority viewpoints. For example:

i. Members of the House of Federation, unlike the present Senate, would be connected to identifiable groups of voters in the country, and their tenure in office would be based on this direct electoral factor. This fact alone would enhance their credibility as regional spokesmen.

ii. The House of Federation would represent the viewpoints of all political parties in Canada. It would not be limited to those national political parties who succeeded in winning a majority or plurality in single-member ridings (as is the case in the Commons), or to those provincial parties that succeeded in forming the government in their respective provinces (as contemplated by the Council of Provinces proposal). Instead, every political party or faction that received significant voting support in either national or provincial general elections would gain representation, the percentage of the popular vote needed to cross this threshold into political significance varying according to the size of the province.

iii. The House of Federation would be a living cross-section of Canadian voting preferences, continuously updating itself with the latest national and provincial election returns, and continuously shifting as electoral support for the various parties ebbed and flowed.

iv. The articulation of provincially oriented views would no longer be the exclusive property of the provincial government to the exclusion of other provincial parties, as all views gaining significant voting support would be represented in the House of Federation. The misleading appearance of political unanimity within a province would be replaced with a representation of the diversity of political views in the province. Similarly, the articulation of nationally oriented views from within one province would no longer be subject to the artificial monopolies that are periodically generated by the operations of the single-member electoral system.

DISADVANTAGES OF THE HOUSE OF FEDERATION

At the same time, there are serious disadvantages in the proposed House of Federation as a means for the effective representation of regional concerns, among the most important of which are:

i. The allocation of membership within the House of Federation would create a body so politically diverse that it would be unable to form a coherent and effective legislative body, and so fragmented that it would lack the first prerequisite of an effective political body, namely accountability.

ii. The House of Federation would be unlikely to operate as a means for the resolution of federal-provincial conflict because of the extremely limited degree of representation it affords to those parties that form the governments of the various provinces. In a total chamber of 118, Premier Peter Lougheed of Alberta would have three members, Premier Bill Bennett of British Columbia two, and Premier Allen Blakeney of Saskatchewan two; even Premier Bill Davis of Ontario would have only five. These numbers are further subject to potential erosion through federal cabinet appointments. It would be most unrealistic to expect a provincial premier to assign such a body, with such a basis for representation, any heavy responsibility for the protection of provincial interests when the "one-in-eleven" logic of First Ministers Conferences offered itself as an alternative. Indeed, provincial premiers might be tempted to seek open confrontation with the national government as a way of showing their voters that the provincial government, and not the new House of Federation, was the most effective means of protecting their interests.

iii. Even apart from the fragmentation along party political lines, the basis of representation remains skewed toward the larger provinces of central Canada. Quebec and Ontario together would enjoy 48 members out of 118, 40.7% of the membership of the House of Federation, compared to 60.3% of the Commons and 46.2% of the existing Senate. Assuming complete cleavages on provincial lines (as opposed to party political, or federal versus provincial selection), it would take all the representatives from at least three

other provinces to outvote Ontario or Quebec, and from at least six other provinces to defeat both together. No other federal system in the world contemplates such a disparity of representation between constituent units in the upper house.

iv. The limited powers of the House of Federation make it a most ineffective chamber for the protection of regional interests. Should the less populous regions succeed in overcoming both their own limited representation and the party political fragmentation of the House, the most they could be sure of gaining is a two or four month delay in the proclamation of objectionable legislation.

v. Even in the areas of governmental activity that are most subject to the conflicting interests of federal and provincial governments, and most likely to be threatening to regional groups who are part of national minorities, the House of Federation is not given any additional or meaningful power. National government activities in areas of concurrent jurisdiction, or involving the spending power or the declaratory power or the emergency power, or proposing constitutional amendments, are all lumped together under the category of "ordinary" legislation, subject to at most a suspensive veto of short duration, and not even that if the Commons decrees otherwise. When conflict between the national government and those regional minorities who find political expression through provincial governments is most intense, the House of Federation has the least to say. Only when the regional minority is also a linguistic minority does the House of Federation have the additional power that might give it the potential of defusing the controversy or preventing objectionable actions.

In sum, the House of Federation would seem to present itself as a body of intriguing political diversity promising tremendous entertainment in the form of political debate, and potentially much more credible in many regards than the present Senate. However, both its weakness and its basis for representation fit it at most for regional *input*, and make it entirely inadequate and inappropriate for regional representation on the basis of political *power*.

2. AN ELECTED SENATE

A number of individuals, addressing the problem of regional representation in the context of the contemporary political and constitutional problems, have suggested the alternative of *electing* Senators.

While Council of the Provinces proposals, and Federal Council notions, and House of Federation ideas, and Devolution of Power demands have all issued from governments and research groups in the form of extended and detailed proposals, and have formed the central theme of conferences and public meetings, most elected Senate proposals have taken the form of more brief and casual suggestions in speeches or articles that address broader concerns. It would be inappropriate, and unfair to the individuals who have made these suggestions, to pretend that their ideas could be subjected to the

same rigorous scrutiny, the same minutely detailed examination, that we have employed in the body of this text for other contemporary proposals.

The suggestions that others have made regarding an elected Senate have been most beneficial in preparing this report. An outline of some of the suggestions, and discussion of their implications, is included in Appendix C. However, we are struck by the fact that after all the words that have been spoken and written about constitutional change, and all the ideas that have been circulated and discussed for the last ten years, so little consideration has been given to the notion of an elected Senate.

We are convinced that the idea of electing Senators for the purpose of regional representation possesses a real and significant potential, and that it deserves serious consideration and thorough discussion. What an elected Senate might look like and how it might operate, and how well it would perform the task of regional representation is presented in the form of a series of recommendations in the next chapter.

C. AN ELECTED SENATE FOR CANADA

VIII. REVIEW AND RECOMMENDATIONS

1. REVIEW

Regionalism is a real and legitimate force that must be recognized and accommodated, not ignored nor rejected. In Canada as in other viable federal countries, citizens feel an identity and a loyalty that is connected to a region within the country, as well as an identity and a loyalty that is connected to the country as a whole. This dual loyalty is a legitimate aspect of any federal system, and not in any sense "unCanadian".

The practical application of "region" in Canadian politics is in terms of those regions uniquely contained within provincial boundaries. Any number of arbitrary quasi-geographical regional boundaries can be generated that are quite satisfying to the on-looker or to the analyst, but provinces have a concrete historical identity and form the practical foundation for the organized activities of citizens. Multi-province regions, whether we are speaking about "the West", "the Prairies", "the Maritimes" or "the Atlantic provinces", are artificial conglomerates that do not hold up under closer scrutiny. The fundamental equation "region = province" guides our comments on regionalism.

The reality and the strength of regional loyalties means that in a federal system, rule by a simple majority (50% + 1) is never enough, for on many issues it will be essential in the interests of true national unity to seek a consensus that embraces the citizens of all regions of the country. This calls for special mechanisms within the institutions of the national government that are responsive to these regional differences, and that provide special leverage for their articulation and recognition within the policy process.

One political focus for regional identities is the provincial government. This is entirely appropriate, for a national minority is sometimes a regional majority, and the provincial government is in an important sense "their" government. This is most obviously true of Quebec Francophones, but also applies to other regions of the country. However, it is not appropriate that the provincial government be the only political focus for regional sentiments because this would imply that any assertion of regional feeling takes the form of pushing the federal/provincial balance of effective power further in favor of the provinces. The need is for institutions within the national government that accommodate regional interests by giving them an effective role in the process of making national policy. In the present context of Canadian political institutions, one can assert regional loyalty only by attacking Ottawa. This problem can be met by institutional changes, and must be addressed in constitutional reform.

Regionalism in Canada is real, legitimate and enduring. If the nineteenth century and the first half of the twentieth century were periods of nation-building, with regional differences yielding to national integration, the latter half of the twentieth century is the era of the individual, which implies a built-in advantage to those units of loyalty and those foci of identity that are smaller, more intimate, closer to the individual. Out of these concerns grows our conviction that institutional change directed to regional representation deserves a top priority in the Canadian constitutional debate.

Existing institutional accommodations in Canada regarding regional representation are no longer adequate. The *Senate* has been handicapped from the beginning by an inappropriate method of appointment and a flawed compromise in the basis for the representation of the several provinces. It has paid for this double handicap with a total loss of credibility as a mechanism for regional representation. The *House of Commons* as a regional representative body has always suffered two major disadvantages. First it is a confidence chamber, with the survival of the government resting on the support of the Commons; this has meant that the Commons must be a chamber dominated by tightly disciplined parties rather than by independent MP's. Second, the House of Commons is a chamber based on representation by population, a characteristic fully appropriate for its confidence purposes but not for regional representation purposes.

The electoral system used for elections to the House of Commons has dealt a further blow by regionalizing party representation, making explicit the limitations to the Commons that had always been implicit. This failure of the Commons has carried with it that great Canadian makeshift, the regionally representative *Cabinet*. Always overshadowed, both in terms its own membership (larger provinces get more portfolios) and in terms of the imperatives of maintaining support in the Commons, by majoritarian concerns of a "representation by population" nature, the Cabinet can no longer even be fully representative in the sense of including within its ranks at least one credible elected representative from each region.

Nor can the *party system* carry the load of effectively accommodating regionalism. The regionalizing of party support has been affected by an increasing separation between the federal and provincial wings of what used to be the same party, and in many regions by the atrophy of the provincial wing of one or more of the major national parties.

It is not possible to solve Canada's constitutional problems by retreating to the watertight compartments notion of classical *federalism*, with matters of special regional concern assigned to provincial jurisdiction, and with national majorities prevailing in the carefully sanitized list of national powers. For one thing, the range of issues which engage regional sensitivities is too extensive for such division to leave a credible role for a national government; for a second, in the age of positive government actively intervening in so many aspects of an increasingly complex society, watertight compartments

always leak and no constitutional definition of power can prevent the growth of grey areas between the jurisdictions where both governments feel obliged to act.

The failure of our existing institutions is so extensive that the answer is not to be sought in fine tuning existing institutions. Effective regional representation requires major institutional reform.

Viewed from the perspective of regional representation, the major proposals that have emerged from the constitutional debate of the last decade are partial and flawed. Proposals that would proceed through the *devolution of powers* would try to increase provincial jurisdiction by reducing federal powers to a sanitized list that does not generate regional problems. They ignore that in the present context of assertive regionalism this could leave the national government with little to do, and that the watertight compartments allegedly generated by the careful delineation of jurisdictions always leak.

The re-assertion of a strong federal role in a context of rising regionalism can be made only if national government institutions themselves accommodate regional concerns, a claim that cannot be supported at the present time. *Reforms to the House of Commons*, whether they are contemplating electoral reform or procedural fine-tuning, overlook the massive double handicap suffered by the Commons in being a *confidence* (and therefore a *party*) chamber whose membership is based on the principle of *representation by population*.

Solving the problems of Canadian regionalism by creating *"federal" or intergovernmental bodies* is more promising. Part of the problem of regional conflict in this country bears directly upon questions of intergovernmental coordination and cooperation, and improved intergovernmental mechanisms would deal directly with this aspect of the problem. But while such improved mechanisms are a necessary aspect of constitutional reform, they are not sufficient in and of themselves for three reasons. *First*, the interests of provincial governments are not necessarily identical with those of the people of the province, and these mechanisms would adequately reflect regional concerns only when these two did coincide. *Second*, the political focus of regional identity would be limited to provincial governments, perpetuating the implicit dichotomy and confrontation that now handicaps *national* politics. *Third*, intergovernmental coordinative bodies can work well for areas of concurrent or overlapping jurisdiction, but their legitimacy and effectiveness diminish as one moves into areas of the exclusive jurisdiction of one or the other government. For all these reasons, therefore, such reforms must be viewed as a partial solution to regional representation, but not in and of themselves adequate.

Surprisingly, *Senate reform* proposals have been the least often and the least seriously considered (except in the form of the Council of Provinces model, sometimes suggested as a reformed Senate, but which we have argued is best treated as a "federal" or intergovernmental body). The House of

Federation proposal is both too weak and too fragmented to be a credible or effective body for regional representation. Although a number of speeches and reports have touched briefly on the question of an elected Senate, these have not been elaborated upon at length or in detail, and often presuppose an extremely weak chamber for the purpose.

Our analysis of existing proposals for constitutional change direct us to a serious and detailed consideration of achieving effective regional representation through an elected Senate. Our recommendations suggest how such a body could best be designed to accomplish effective regional representation in Canada.

2. RECOMMENDATIONS AND RATIONALE

Recommendation 1: *The resolution of the problem of effective regional representation in Canada be sought by establishing an elected Senate in Canada.*

In most federal systems, it is taken for granted that the primary (although not the only) forum for the articulation and accommodation of regional concerns is the upper chamber of the national legislature. Despite similar intentions by the Fathers of Confederation, the Canadian Senate does not adequately perform this function. The most obvious remedy is drastic revision to the nature of the Canadian Senate to better fit it for the job it was intended to do.

Senate Reform provides the most direct way for the effective articulation of regional concerns within the national government. Although not all problems of a regional nature would be addressed, as there would still be need for formal mechanisms for inter-governmental coordination of policies and implementation, an elected Senate would offset the recurrent impression of a decision-making process that is national in name only, and indifferent to the concerns of many parts of the country.

Majority rule is only one aspect of effective democratic authority in a federal system; the other must include reference to a consensus that embraces the major regions of the country, and a sensitivity to their special concerns. An elected senate would greatly improve the regional legitimacy of national government action and relieve provincial governments from the task of becoming too involved in national matters. The creation of an elected senate is not an attack on the powers or the prerogatives of the national government or provincial governments.

Recommendation 2: *The reformed upper chamber of the Parliament of Canada should be called the Senate of Canada.*

Recent constitutional reform proposals abound in new and exotically named bodies and institutions. The House of Provinces, the Council of Provinces, the Federal Council, the House of Federation are only a few of the

examples. We see no need for such name changes. The word "Senate" is one of venerable and established meaning, and one that has a clear and widely recognized history as referring to upper chambers in the Anglo-American democracies.

Recommendation 3: *Members of the Senate of Canada should be directly elected for limited terms.*

One of the reasons that is sometimes given for considering an elected Senate is the alleged unacceptability of an appointed body in a democratic age. This logic is not convincing. The cabinet in a parliamentary system, for example, is not elected. Canadians in general elections elect members of the national and provincial legislatures; the leader of the largest party in the legislature is normally appointed to form a government, and he then proceeds to appoint to his cabinet those individuals that he wishes to assist him in the governing of the country. From first to last, the cabinet is an appointed body, although usually (but not invariably) cabinet appointments are made from an elected legislature.

The Supreme Court of Canada, like all other courts in Canada, is staffed by appointed judges. The objection to the present Supreme Court comes, not from the fact that these judges are appointed, but from the unilateral method of that appointment. It would not seem to be a necessary improvement to elect judges, either to the Supreme Court or to any other court.

The reasons for considering direct election flow, not from any alleged tidal wave of democratization to which we must automatically yield, but from the practical and immediate implications of election. An individual who holds his position because he has been elected to that position has a clear and unambiguous mandate to represent those people who elected him in matters directly pertaining to the issues and concerns that emerged as significant during that election. Election for a limited term implies a clear and direct accountability to those voters at the end of that term. The result of the combination of these two factors is legitimacy.

It is not that individuals who are not directly elected cannot speak out on regional concerns. Nor can it be suggested that unelected individuals are necessarily powerless to achieve real concessions for the regions that they "represent". But what unelected representatives lack is a firm popular and constitutional basis for their influence.

An elected Senator would possess a clear mandate for speaking out on behalf of his region, and a leverage for achieving concessions that would not rest merely on personality, fortuitous circumstances, or political convenience.

Recommendation 4: *The basis of representation in an elected Senate should be equal representation for each province.*

The basic unit for representation in an elected Senate should be the province. This follows the logic of our current constitution regarding the existing Senate and the House of Commons, both of which assign representation to provinces. No Senator or Member of Parliament does or can represent a region which straddles provincial boundaries.

The most practical and meaningful application of the concept of *region* in the Canadian political context is the *province*. Discussions of Canadian politics abound with a plethora of geographical and quasi-geographical divisions: the Maritimes, the Atlantic Region, the West, the Prairie Provinces, central Canada, etc. Some of these divisions combine several provinces; others divide provinces. For political purposes, Canada is divided into a number of regions that go under the label of "provinces", and this political reality should be reflected in the equal representation in the Senate of all provinces.

It is important to remember that we are talking only about reforms to the upper chamber of a bicameral legislature. In the House of Commons, governments would survive on the basis of the confidence of a chamber whose membership was based closely on representation by population. Neither the legitimacy of this body nor the direct accountability to it (and through it to the national electorate) of the government of Canada is in any way threatened, or undermined. However, the representation by population of the lower chamber need not and should not be replicated in whole or in part by representation in an upper chamber. An elected Senate should represent the citizens of Canada on the basis of the *region* in which they live.

It is only in Canadian politics that the principle of equal representation for all provinces regardless of population is regarded as radical or unusual. Other federal systems (Australia, the United States, Switzerland) possess upper chambers whose members are drawn in equal numbers from each constituent unit, regardless of the differences in population. These systems accept as legitimate the dual nature of the representation that is required in a federal system: the representation of citizens in the national legislative process on the basis of both *population* and *region*. The same principle of equal representation was adopted by the federal and provincial ministers during the summer of 1980, which drew up the so-called "best-efforts draft", albeit not with specific reference to an elected Senate.

Any elected Senate in which those regions that we in Canada call provinces are not equally represented would not be organized specifically or explicitly for the purposes of representing and protecting *regional* concerns. It would begin work under a serious handicap, and receive the justifiable scepticism of those people who already feel that the existing structures of Canadian politics have operated against the best interests of their province.

Recommendation 5: *The Yukon Territory and the Northwest Territories should each be entitled to elect members to the elected Senate of Canada.*

An elected Senate would become a significant factor in the formation of national policies; it is therefore undesirable to exclude from representation within it the inhabitants of those regions in Canada that have not yet achieved provincial status. Each of the two territories should therefore elect one or two Senators and be given the same number of Senators as any other province upon attaining provincial status within Confederation.

Recommendation 6: *Each province should elect a total of from six to ten Senators to the new Senate of Canada.*

The number of Senators allocated to each province should be related to the goal of creating a legislative chamber of credible size, that is neither too large nor too small to function effectively. For example, the U.S. allocation of two members for each state would yield a Senate of only twenty members in Canada, a body which seems too small to possess credibility as an effective legislative body.

Legislative bodies in Canada range in size from 15 in the Yukon to the 282 of the House of Commons. Provincial legislatures range in size from 32 (Prince Edward Island) to 125 (Ontario), with the most popular size being around 60. This would suggest that most Canadians feel comfortable with a legislative chamber of this size.

Any specific number reached in this connection must be the result of a trade-off between extremes. It seems excessive to have a province as small as Prince Edward Island electing ten Senators to join their four MP's in Ottawa; yet six Senators seems a small number to represent the diversity that is contained within the provincial boundaries of Ontario. In addition, the more Senators that are elected at any one time from any area, the more unrealistic it becomes to expect voters to cast their ballot on the basis of an informed judgment of all the candidates. Yet the fewer Senators that are elected at any one time from any unit, the closer the results will approach the inequities and distortions of the single member riding electoral system. A workable number lies somewhere between the extremes of six and ten.

Recommendation 7: *Elections to the Senate of Canada should be held at the same time as national general elections, and Senatorial terms should be measured in terms of the life of a Parliament.*

If Canadians are to elect Senators, the question is how best to time these elections. One possibility is to hold Senatorial elections at fixed intervals (say, every five or six years) completely independent of federal or provincial general elections, which would continue to be held at irregular intervals at the discretion of the first minister. The advantage of such a solution is that Senatorial elections would be held normally in isolation from other party political contexts, and the Senatorial campaign would focus directly on regional concerns and the spokesmen to articulate these concerns in the national Parliament. The isolation of the Senatorial campaign would maxi-

mize the probability that voters would concentrate on the individual candidates rather than the political parties, and direct their ballot to regional representation rather than to the selection of a government.

The problem with this suggestion is that it means more elections. At present, the average Canadian votes twice (one at the national level, once at the provincial) in every three or four years. Independent Senatorial elections for fixed terms would increase this by a full 50%. The cost of more frequent elections is not only in substantial outlays of funds, but also in terms of public interest, which suffers immediate erosion in the face of almost endless party political campaigning. The Australian experience, where such a method of Senatorial election is used, should be a cautionary example. One of the reasons Australia maintains the practice of compulsory voting is the considerable attrition of public interest that has been caused by the multiplicity of election campaigns. For this reason, direct elections for fixed terms in separate and independent elections for a Canadian elected Senate should be avoided.

A second possibility would be to "piggy-back" Senatorial elections onto *provincial* general elections. This would have the advantage of separating Senatorial elections from federal general elections (and thus from the possibility of becoming only the second half of a vote indicating a preference for a given national party), without the added cost in terms of both money and interest of yet another full set of national elections. It would also have the advantage of focussing the concern of the electorate, and therefore the educative and promissory elements of the campaigns of Senatorial candidates, on issues and concerns of regional/provincial scope.

These advantages, however, are purchased at a rather high cost. First, the very fact that the Senatorial election could be overshadowed by a provincial campaign would undermine the credibility of Senators as regional spokesmen on *national* issues, as opposed to the more immediate issues that presumably guide the choice of a provincial administration. Second, the party systems in some provinces are quite different at the national and provincial levels, and this would generate considerable confusion in the voters' choices. Canada has had something approaching a "dry run" of this possibility, when the national election and the British Columbia provincial general election were both held in May, 1979. Although no thorough analysis has yet examined the impact of the superimposition of two different elections in a single time period, impressionistic accounts suggest that the different parties suffered quite differently from the confusion. Both the degree of confusion created, and the differential in party liability to negative effects, would seem to be strong counter-arguments to the suggestion. Third, the proposal implies frequent interruptions to the operations of the Senate itself as an ongoing body. Ten provinces, each holding elections about once every four years, would mean that on average each year would see two or three provinces holding elections, and presumably the Senators affected would

either cease to be members during the campaign, or at least be obliged to absent themselves in the interests of seeking re-election.

The third possibility would be to have Senatorial elections "piggy-backed" onto national general elections. The advantages would be several. First, Senatorial elections would take place when the focus was on national issues and therefore upon regional responses and perspectives on those national issues. Second, because Senatorial elections would take place at the same time as national general elections, the turnover in Senate membership would happen at the same time as the turnover in Commons membership, minimizing the disruption to the bicameral legislative procedure. Third, the costs in terms of public interest would be limited by adding a second level to national general elections, rather than adding a whole new set of elections. The disadvantages might include the indefinite term, and the increased likelihood that the combined election would maximize the degree of straight party voting — that is, the extent to which votes for Senators would be influenced by the voters' preference for national government, rather than directed to the question of choosing the best candidate for the purposes of regional representation.

All three ideas have their merits. However, on balance, the third option of holding Senatorial elections concurrently with national elections gives the most advantages while generating the fewest offsetting problems.

Recommendation 8: *Senators should be elected to a term that is to be defined as the life of two parliaments, and only one-half of the Senators of any province should be elected at any single national general election.*

Six to ten Senators per province is a number sufficiently large to consider electing Senators for overlapping terms: that is, at any given time, only one half of the Senatorial representatives for any province would be coming up for re-election. This in turn means that the term for which any individual Senator would be elected would be *two* Parliaments.

The term created by this procedure would be indefinite, but would fluctuate within a range that can easily be determined by projecting such an elected Senate backward upon Canadian political experience since World War II. A Senator elected in 1945 would have held office until 1953, and one elected in 1949 until 1957. The likely maximum term of an elected Senator would therefore be eight years. A Senator elected in 1962 would have faced re-election in 1965. The likely minimum term of an elected Senator would therefore be three years, although this is an extreme, and the five-year terms of Senators who would have been elected in 1953, 1957 and 1963 would provide a better rule of thumb. Since 1945, Canadians have had 12 general elections in 36 years, suggesting an average Senatorial term of six years. This is neither so long as to undermine accountability, nor so short as to undermine the plausibility of an elected Senator accomplishing something.

The advantage of overlapping terms would be that they would contribute to a strong element of continuity in the membership and the operations of the Senate as an ongoing legislative body. No matter how great the shift in party political support between any two national elections, the maximum possible turnover in Senate membership would be one half. At the same time, it would keep the number of Senators seeking re-election in any province at one time to a small and manageable number.

The advantage of the longer term would be to free Senators to show less preoccupation with the question of impending re-election campaigns, and to give them a longer period of time to establish themselves and to become informed and effective regarding the operation of the national legislative process.

Recommendation 9: *Senators should be elected at large on the basis of a single province-wide constituency.*

In provincial and federal elections Canadians traditionally vote for a single elected representative from a relatively small geographic area within one province. If this procedure were to be followed in Senatorial elections, each province could be divided into three to five Senatorial constituencies, each of which would elect one Senator during every national general election. The main advantage of this system would be that there would be a single representative responsible for representing all the citizens of an unambiguously designated geographical area. Voter confusion would be minimized by using the same voting and electoral system for both Commons and Senatorial elections.

However, this advantage is purchased at considerable cost. For example, there is the problem of redistributing Senatorial districts after every ten-year census. The process of electoral redistribution in Canada is already so drawn out and involved that one hesitates to complicate the issue further. Senatorial and Commons electoral boundaries would seldom coincide, and this would generate considerable confusion for many voters. More seriously, the single-member system distorts the degree of support for political parties by favoring the largest party, and punishing the smaller parties, in any particular region. The result of this bias built into the electoral system has been the regionalization of party representation in the Commons. Senatorial elections in single-member ridings would do nothing to redress this problem. Finally, the very similarity in the electoral systems used for Senate and Commons elections, and therefore in the style of representation implied by it, would generate a degree of competition and even conflict between Senators and MP's representing the same group of people.

Alternatively, Senators could be elected on a province-wide "at large" basis. This makes it much harder for one party to monopolize Senatorial representation on the basis of a plurality or small majority of the popular vote (as is the case in House of Commons representation for Alberta and Quebec),

and would provide for the articulation of other viewpoints in the formation of national policy. It would also undermine the impression, currently generated by our electoral system, that some regions monolithically favor one party. Further, members of the Commons represent all voters in a stated geographical area, while Senators represent those who voted for them in whatever part of the province (which support may or may not have a distinct and identifiable geographical focus within the province). If adequately articulated and accepted, this would reduce the likelihood of direct competition between them, or of MP's feeling threatened by the direct election of Senators. Representation by population and regional representation are two different ways in which the citizens of a federal system require representation; they are not an overlap or duplication. Different electoral systems for the two levels would make it easier for the different styles of representation to emerge in an understandable form.

Province-wide elections also have some drawbacks. Specifically, by positing the whole province as a five-Senator electoral district, a very large distance is created between the candidate and the individual voters, a distance which it will be very difficult and very expensive to cover in campaigning. Even the degree of rapport and communication now possible between the Commons candidate and the voter will become impracticable except in the smaller provinces. However, the province-wide election remains preferable to the alternatives.

Recommendation 10: *Senators should be elected by the transferable vote.*

There are several alternative voting systems for province-wide multi-member elections. The major criteria for choosing between them must be the extent to which the voting system contributes to the role of the Senator as the member of a chamber devoted to regional representation. One of the major flaws of the House of Commons as a chamber of regional representation is the fact that in the final analysis, and on most crucial matters, it is primarily a *party* House. This observation is not made as a blanket indictment of the Commons, since such a tendency is built into the principle of responsible government and is thoroughly appropriate within a system based on that principle, but to specify the concerns that must direct the project of effective regional representation. Electoral systems which reinforce the role of the elected Senator as a *regional* representative should therefore be preferred over those which emphasize his role as a *party* representative.

The simplest procedure would be for each voter to have one vote for each seat that is to be filled. However, this system gives us all the disadvantages of a single-member riding with none of the advantages. The use of such a method in Australian Senatorial elections before World War II showed the result almost invariably to be that one party would take all the seats from a state, an outcome that would not recommend itself to current Canadian

political conditions. Electoral systems of this sort are used in municipal elections in many parts of the country, but are best suited to electoral contests where party politics play a minor or inconsequential role. An electoral system which attempted to ignore the presence of political parties would be totally inappropriate, as it is neither possible nor desirable to bar political parties from Senatorial elections.

A second alternative would be proportional representation on the basis of a party list. Each official party organization would draw up a list of candidates in rank order, and as many of these candidates would be declared elected as the party's share of the vote entitled it to. The major defect of such a system is that it is almost certainly too "party-ridden" to be acceptable to most Canadians. The party list is generated by the party organization, in accordance to their priorities and their debts or grudges. Yet one jealously guarded aspect of the nomination process in Canada is the autonomy of the local party organization. Party-list systems presuppose that votes belong to parties, while the Canadian political tradition has always supported the idea that votes are given to individuals. A Canadian elected Senate should stay within this tradition. If the bias of Senators is to be toward *regional* interest rather than *party* interest, then everything about the office, including the method of election, should be designed to maximize regional influence.

A further defect of party-list systems is that they discourage independent candidates. We do not believe that Canadians would be well-served by an elected Senate, to which the access routes were absolutely and pre-emptively dominated by organized political parties. At first glance, it would seem that the greater distance between Senator and voters created by the single province-wide constituency would (except in the smaller provinces) reduce independent Senatorial candidacies to the status of quixotic outside chances anyway. Yet any individual who had established a public reputation and a significant personal following would prove a very credible Senatorial candidate. Mayors and aldermen of large cities would be obvious examples, as would former provincial or federal cabinet ministers and popular MP's.

A third and preferred option would be an electoral system employing the Transferable Vote. In such a system, the voter is asked to cast a ballot which ranks candidates in the order of his preference. A quota of votes is established as necessary to elect any one candidate. Any surplus of votes received by a candidate over and above the quota is distributed proportionately according to second choices, and a second set of votes for distribution is generated by eliminating the candidate receiving the smallest number of votes until the specified number of members has been elected. The redistribution of this set of surplus votes over and above the quota is the time-consuming part of the process, but hardly insurmountable in an electronic age; for example, one could use machine-scorable ballots, and the detailed calculations could be done by a computer in a matter of minutes.

The principal advantage of the system is that it allows the voter to fine-

tune his own electoral choice. He can decide for himself whether he wants his support to go to a particular party, or only to a specific individual regardless of party affiliation. Even when he decides to support a particular political party, he can choose which candidate of that party he prefers. This flexibility on the part of the voter encourages a similar flexibility on the part of the candidate, who must now make clear to the voters what he stands for. The Transferable Vote allows the voter to choose, not just one party over another, but one individual over another.

One problem that is suggested against the Transferable Vote is that it is too complex and complicated. One should not lend too much credence to such an objection. Several countries (one example being the Republic of Ireland) employ the Transferable Vote, and other countries use even more complicated systems (such as the flexible party list). It would seem ungracious and inaccurate to suggest that Canadian voters are insufficiently sophisticated to utilize a similar process. More serious is the suggestion that voter confusion would be invited by the fact that one voting system would be used for elections to the Commons, and a second for Senatorial elections, with both elections happening at the same time. Considerable voter education would be required, and a larger proportion of spoiled ballots for Senatorial elections might be inevitable. It has also been suggested that the Transferable Vote anticipates unreasonable levels of public knowledge. To use his preferential ballot most effectively, the voter must acquire information on all the Senatorial candidates.[10] The process whereby votes are translated into elected members is also somewhat complicated, and often hard to explain in a straightforward fashion. Initially an electorate accustomed to the frequent updates of election night television might find the intricacies of Transferable Voting somewhat confusing.

We believe that the disadvantages of the Transferable Vote can be overstated, and that its advantages make it much preferable to the other alternatives.

Recommendation 11: *The Government of Canada should be responsible only to the House of Commons, and not to the elected Senate of Canada.*

The existence of an elected Senate should not qualify in any way the principle or the operation of responsible government. The government of Canada should be responsible to the House of Commons, and should be required to retain the confidence of that body that duly represents the citizens of Canada on the basis of representation by population. The government of

[10]Because of the way that the Transferable Vote operates, it is not advantageous for each party to field a candidate for each of the vacancies. The usual rule of thumb is one more candidate than the party expects to elect. This generates about three candidates for each Senatorial seat, or about 10 to 15 candidates in the type of election we are proposing. This is large, but not unmanageably so, whereas to use Transferable Vote with large numbers, as some elected Senate proposals contemplate, poses very real problems.

the day should not be responsible to both Houses in the sense of requiring the confidence of both to survive in office. The idea of "double responsibility" is not workable. Only in the House of Commons should a motion of non-confidence have any meaning; such a motion should have no place in the proceedings of an elected Senate.

On similar logic, a money bill should be initiated only by a Minister of the Crown and only in the House of Commons. It is a fundamental principle of Anglo-American democracy (and not only of parliamentary systems, as the same rule applies to the American Congressional system) that money bills should be capable of being introduced only in the chamber that is based on representation by population.

The situation is somewhat more problematic with regard to the amendment of money bills. Clearly, an upward revision of such a bill would be tantamount to introducing a money bill, but a downward revision, or an outright rejection, is a different matter. The elected Senate of Canada should be barred from the initiation, but not from the downward revision or rejection, of money bills.

With regard to both questions of confidence and money bills, the elected Senate of Canada should explicitly and by formal constitutional stipulation be subordinate to the House of Commons.

Recommendation 12: *The elected Senate of Canada should* **not** *have the power to ratify international treaties, or the appointment of Ambassadors.*

Many of the contemporary constitutional proposals dealing with Senate reform would give that chamber a role in the ratification of certain activities on the part of the national government. We are in sympathy with some, but not all, of these suggestions.

One suggestion is that a reformed Senate could be given the power to ratify international treaties which have been entered into by the national government. Such an idea is at first glance appealing, as it would correct the unfortunate oversight that has left the Canadian constitution without an effective treaty power.[11] But this suggestion is an inappropriate copying of the practice of other countries possessing an elected Senate. The implication of a formal treaty power subject to ratification by an independently elected upper chamber is that the national government would thereby gain the legislative authority that would enable it to perform any duly ratified international treaty, whether or not such matters normally came under the jurisdiction of the

[11]More precisely, there is a treaty power in Section 132 of the British North America Act, but it refers only to *Imperial* treaties, which are no longer a factor in Canadian international relations. The evolution of Canadian independence has left the national government without a formal treaty power, which has meant that the performance of international treaties in areas of provincial jurisdiction rests not with the national government but with the provincial governments, who may or may not cooperate.

government of Canada. Canada does not need a treaty power of this nature. On the other hand, if ratification by an elected Senate does not carry with it such legislative authority, then the act of ratification is an empty gesture which would add nothing to domestic or international politics.

It has also been suggested that a reformed Senate could have the power of ratifying the appointment of ambassadors. This idea is somewhat baffling. It might be felt that such an act would enhance the stature of Canada's international representatives, although such an outcome seems unlikely. The function of an elected Senate would be to represent the citizens of Canada on the basis of the regions in which they live, and it does not appear to us that the appointment of ambassadors to foreign countries is normally or routinely a matter that has any specifically regional overtones. It is true that the United States Senate does possess the power to "advise and consent" to the appointment of ambassadors, but in the context of the American system this has more the overtone of the approval by a legislative body of an executive action, of the sort that is more appropriately left to the House of Commons in a system of responsible government.

Recommendation 13: *The appointment of a Justice of the Supreme Court of Canada should* **not** *be subject to ratification by the elected Senate of Canada.*

One of the grounds for criticism of the status of the existing Supreme Court of Canada is the fact that its members are appointed unilaterally by the national government. Although a Supreme Court in a federal system functions as an impartial referee and adjudicator in disputes between the two levels of government, in this case the referee is appointed by one of the governments. While it is a moot question whether the result has been a bias in the decisions of the Court, the method of appointment is an ongoing source of dissatisfaction.

A reformed Senate has been seen as one of the means of remedying this defect. The national government could nominate individuals for appointment to the Supreme Court subject to ratification by the Senate. On balance, this should not be considered an appropriate use of an elected Senate in the Canadian context. The public scrutiny before a political forum of candidates for judicial appointments is not part of the Canadian tradition, and could discourage some competent candidates from accepting nomination.

Because the Supreme Court of Canada has a major impact on Canadian federalism through its rulings on intergovernmental disputes over jurisdiction, it would still be advisable to appoint members to the Supreme Court by a procedure that is less dominated by the preferences and initiative of a single level of government. But the reference here is to intergovernmental disputes, and the elected Senate as contemplated in these proposals does not represent provincial governments, but rather is an institution of the national government directed toward providing sensitivity to regional concerns in the for-

mulation of national policy. A better way of removing the stigma of unilateralism from the appointment to members of Canada's highest court would be to include provincial governments or intergovernmental bodies such as the First Ministers Conference in the process of appointment.

Recommendation 14: *The appointment of members to designated national boards, agencies and tribunals should be by nomination of the national government subject to ratification by the elected Senate of Canada.*

A reformed Senate could play a significant role with regard to appointments to national tribunals, boards and agencies of special regional significance. Obvious examples would include the Canadian Transport Commission, the Canadian Radio-Television Commission, the Canadian Wheat Board and the National Energy Board. The most common practice at present is for members of such bodies to be appointed by the national government by order in council. Ratification of these appointments by a regionally-sensitive elected Senate of Canada would enhance the status and help to legitimize the decisions of such bodies. It would be possible to devise regional panels within the Senate to deal with special types of boards or agencies (such as only Senators from grain-producing provinces approving appointments to the Wheat Board), but on balance it would seem preferable to avoid the rigidity that would be implied by such entrenched special status. The thought would be that over time a tradition of "Senatorial courtesy" within the new chamber would develop the same opportunities for special regional sensitivity in a more flexible manner.

Recommendation 15: *The elected Senate of Canada should have the power to ratify the extension of the invocation of the emergency power beyond a constitutionally stated maximum period, the power to ratify the exercise of the declaratory power, and the power to ratify the exercise of the powers of reservation and disallowance if such are retained in a reformed constitution of Canada.*

The government of Canada possesses a special set of powers that have been referred to as unilateral federal powers. These would include:

— the emergency power that has been read into the "peace, order and good government" clause in Section 91 of the British North America Act

— the powers of reservation and disallowance of provincial legislation

— the "declaratory power" in Section 92(10)c of the British North America Act that permits the government of Canada to bring any provincial work or undertaking under national jurisdiction by declaring it to be to the benefit of two or more provinces of Canada

— the "spending power" which permits the national government (in effect) to regulate programs coming within provincial jurisdiction through the provision of funds from the general revenues of Canada.

It is unrealistic to suggest that the Canadian constitution should not

contain provision for an emergency power to be exercised by the national government under extreme conditions. The cause for concern is the open-ended and unrestricted terms of that emergency power as it now exists. The elected Senate of Canada could perform a useful oversight function in this regard. The suggestion is not that prior Senate approval would be necessary before the emergency power could be invoked. It is often the nature of such emergency procedures that time-consuming routines cannot be employed as a preliminary to effective governmental reaction. The recommendation is made to ensure that the use of these powers beyond a constitutionally stated maximum period (say, thirty days) requires Senate approval. Such a provision would not prevent the national government from coping with an emergency, but it would reduce the open-ended and unilateral features of the power.

The powers of reservation and disallowance have been felt by some constitutional commentators to be unsuitable carry-overs of a conception of Canadian federalism that is no longer appropriate, and the elimination of such features from the constitution has been widely recommended. An alternative view is that such powers are a necessary feature of a Canadian constitution that gives meaning to the power of a truly *national* government. *We incline toward the first of these two views.* However, if the powers of reservation and disallowance are to be retained in a reformed constitution of Canada, their exercise could only be justified on the grounds that the offending provincial legislation constituted a major and intolerable disruption of an essential national policy, and a judgment of this nature should be subject to ratification by a regionally-sensitive elected Senate.

The declaratory power is perceived by some as a standing threat against the major public works and undertakings of any province. On such a view, such vital works as Ontario Hydro or Hydro Quebec rest provisionally rather than absolutely in provincial hands. On the other hand, the major historical use of the power has been to extend national jurisdiction over a number of public undertakings at the explicit request of provincial governments, rather than over their violent objections. One limitation that has been suggested that would extend the historical function of the power while reducing its appearance of a standing threat would be to qualify the power by requiring the consent of the province or provinces within which the works are situated. Another limitation that would work in a similar direction would be to require ratification by a regionally-sensitive elected Senate for an exercise of the declaratory power.

Many provincial governments objected to the way that such exercises of the federal spending power as conditional grant programs interfered with their freedom of action and distorted provincial priorities. Although few new conditional grant programs have been initiated in the last fifteen years, this item remains a matter of contention between federal and provincial governments. It is not necessary to give the elected Senate of Canada any special powers in this regard. For one reason, it already has the capacity to deal with

such legislation through its power to amend (but not to initiate) money bills. For a second, the elected Senate is not contemplated as a *provincialist* body somehow "standing in" for the provincial governments, but rather as a regionally-sensitive *national* chamber.

Recommendation 16: *Within the process of constitutional change, the role of the national parliament should include a full veto power for the elected Senate.*

As one chamber in a bicameral legislature, the Senate would be a part of the process whereby the national government initiated proposals for the amendment of the Canadian constitution. The role of ensuring sensitivity to regional concerns in the formulation of national policy would be nowhere more important than in that special case when the national policy contemplated significant revisions to the constitutional framework. As a fundamental principle, any scheme providing for effective regional representation must be "locked in" by a constitutional amending formula which reflects the same sensitivity to regional concerns. We take for granted that the Senate would play a major role in such a procedure, and that its approval would be a fundamental prerequisite that could not be bypassed.

The elected Senate would justify such a responsibility by virtue of its role of regional representation. It would not in any sense be a stand-in or a substitute for provincial governments, who possess an independent right to be consulted and to participate in the process of constitutional change. Regional input within national government proposals, and provincial participation in constitutional change, are complementary but logically separate aspects of the process whereby a federal system generates the kind of cross-regional consensus without which a genuine and enduring national unity is impossible.

Recommendation 17: *The elected Senate of Canada, as a national institution and the upper chamber of a bicameral national legislature, should be formally recognized as an integral part of the formulation of national policy.*

Many contemporary proposals for an elected Senate take for granted a modest role for the Senate with regard to "ordinary" legislation, those matters of national legislation which are not connected with constitutional change, the exercise of unilateral federal powers, concurrent jurisdiction, or matters of special intergovernmental concern. Typically, the powers of the elected Senate in this regard are limited to a suspensive veto of short duration. Other proposals for Senate reform (such as the House of Federation), or for the creation of other bodies in the place of a Senate (such as the Council of Provinces proposals) are similarly reticent and limited in this regard.

There is no reason to restrict so narrowly the powers of the elected Senate. Confidence and money questions apart, there is no reason why an elected Senate should be assigned powers in the legislative process significantly less than those of the House of Commons. Both Senators and Members of the House of Commons would be directly elected by the people of Canada during a nation-wide election campaign that focussed on national issues. The only difference between them would be that members of the one chamber were chosen on the basis of representation by region, and members of the other on the basis of representation by population. Nothing in the method of selection or in the basis for representation presupposes the complete subordination of one chamber to the other, or the relegation of one to legislative impotence and irrelevance.

What is objectionable about the existing Senate is not the formal power it possesses, but the fact that it possesses that power without any clear democratic legitimacy for exercising it. There is no need to choose between a body that has power but no legitimacy, and a body that has legitimacy but no power. The legitimacy of direct election entitles members of an elected Senate of Canada to exercise the formal power that the appointed Senate of Canada has, especially in recent years, lacked the political base to use.

The role of an elected Senate is not to serve as a stand-in for provincial premiers, articulating the viewpoints of provincial governments. Premiers are well able to speak for themselves and need no assistance, nor would they welcome it. Rather, the role of an elected Senate is to provide for the articulation and protection of regional concerns in the formulation of national policy, and it is entitled to the degree of power that will generate a greater degree of sensitivity in national policy to those concerns. Many contemporary proposals see the greatest role of a new Senate as residing in the area of intergovernmental (that is, federal-provincial) relations and conflicts. *We sharply dissent from this approach.* It is only the defects of the institutions of national government that have led Canadians (laymen, academics and politicians alike) to lump together regional representation problems with intergovernmental problems, because it is only those institutional defects that have thrust upon the not-altogether-unwilling shoulders of provincial governments the quite distinct role of regional representation in national policy-making. With the creation of an effective chamber of regional representation within the national government, the separation of regional representation problems from intergovernmental problems should facilitate the resolution of both.

But this again casts the elected Senate, not as a stand-in for provincial governments, but as a chamber promoting regional sensitivity *within* the national government. And this entitles it to significant power, not within matters of special intergovernmental importance, but precisely within those matters which are considered to be "ordinary" legislation wholly within the exclusive areas of national jurisdiction. Only if one casts the elected Senate in

the wholly inappropriate role of intergovernmental arbiter can one justify limiting its effective power to matters of intergovernmental concern.

The British North America Act provides that before a bill may be presented to the Governor General for royal assent, it must be passed by both Houses of Parliament. This is the fundamental logic that should guide the operations of an elected Senate of Canada.

Recommendation 18: *A standing joint reconciliation committee should be created to settle disagreements between the Senate and the House of Commons by the formulation of mutually acceptable compromises*

Recommendation 19: *With regard to ordinary legislation the negative vote of the Senate should be over-ridden by repassage of the rejected legislation through the Commons by an unusual majority.*

Recommendation 20: *We recommend that the elected Senate of Canada have an absolute power of veto not subject to any over-ride by the House of Commons on such matters as:*

— The amendment of the constitution of Canada

— The ratification of nominations for appointment by the Government of Canada

— The ratification of the exercise by the Government of Canada of its extraordinary powers

In any bicameral legislature, there is the possibility that a disagreement can arise between the two chambers. One chamber may vote one way on a measure of national policy, and the second vote another way, and neither one be willing to give way.

Such a possibility for disagreement would also exist between the House of Commons and an elected Senate of Canada. In a real sense, this is the whole point of proposing a reformed Senate; if the new Senate were always to agree with the government or always to give way before it, there would be little or no point in contemplating its creation. The question therefore arises of the mechanisms that should be adopted to resolve such a political stalemate.

This choice involves a real trade-off between competing values. On the one hand, if we are willing to allow the elected Senate an absolute veto, such as the full veto possessed but seldom exercised by the present Senate, then we are accepting the possibility that on some occasions the government of Canada may not be able to enact its preferred national policies. On the other hand, if we are willing to allow the government and the Commons to override the negative vote of the Senate without difficulty, we are running the risk of creating a regionally sensitive Senate that will be no more than a political word-shop, tolerated by the national government when it does not get in the

way and ignored when it does. Setting the balance in this trade-off is the critical point in establishing an elected Senate.

There are a number of alternative procedures that might be suggested for the purpose of resolving disagreements between the two chambers:

1. limiting the power of the Senate to a suspensive veto
2. simple repassage through the House of Commons
3. repassage through the lower house with an extraordinary majority
4. joint sitting of both Houses, with a simple majority sufficient for passage (the relative power of the two Houses would depend on their relative size, and the increasing size of the Commons after every ten year census contemplated by the Representation Act 1974 would progressively reduce the power of the Senate)
5. submission of the disputed legislation to national referendum
6. no formal procedure for the resolution of deadlock

The procedure for the resolution of deadlock must accommodate both an effective elected Senate and the responsibility of the government of Canada. A mix of measures is necessary to resolve disagreements between the two Houses on different sorts of measures.

The first stage in the resolution of such disagreement would be the referral of the matter to a Standing Joint Reconciliation Committee to seek a mutually satisfactory compromise. On most matters, if the Joint Reconciliation Committee was unable to reach a mutually satisfactory compromise, the House of Commons should be able to have its way, but only upon clearing a double hurdle: *repassage* through the Commons by an *unusual majority.* The rejection of a measure by the Senate would force a determined government to expend further time in the House of Commons in the light of heightened public attention and concern, and it would under normal circumstances oblige it to obtain the support of at least one of the opposition parties to muster the requisite margin in the Commons. Senate opposition could not be taken lightly. At the same time, a determined government supported by a large majority in the House of Commons (which would usually imply a wide base in terms both of regional and party political factors) would be able to have its way, and Senate opposition would not necessarily mean irremediable political deadlock. Short of such strong support, a degree of deadlock is contemplated; the spectre of a paper-thin majority having its way over strident and widespread regional opposition is not one that is compatible with the broad-based consensus essential to the stable operation of a federal country.

On matters that are of special regional sensitivity, the elected Senate should possess even greater powers. These would include constitutional amendments and the exercise of the unilateral federal powers. On such matters, the elected Senate should inherit the full co-equal legislative authority of the existing Senate, with the concomitant implication that the

House of Commons would have no power to over-ride Senate opposition in these areas.

These suggestions, of course, deal only with the formal mechanisms for the resolution of disagreements between the two chambers. It is not an empty comment to observe that a determined Prime Minister, frustrated by Senate and Opposition in his attempt to enact a national policy that he felt to be of pre-emptive importance, would retain the option of dissolving the House of Commons for a general election centered on that specific issue. The fact that the Senate was not a confidence chamber would mean that a Prime Minister could never be forced to seek such a dissolution, but an election in these circumstances could potentially strengthen the Prime Minister's hand in three different ways. First, if he had correctly judged the public mood, the result could give him an increased majority sufficient to override Senate opposition. Second, even short of such an outcome, the mandate implied by his re-election might lead some Senators to reconsider the appropriateness of continued opposition. Third, since any dissolution of the House of Commons would take with it for re-election one-half of the Senators from each province, the result might be (if the Prime Minister had judged sentiment in the regions more accurately than some Senators) a shift in the voting balance of the Senate.

In our judgment, this mix of procedures for the resolution of disagreement between the chambers provides for a Senate with sufficient power and credibility to force greater regional sensitivity in national policy, without undermining the principle of the ultimate supremacy of the House of Commons and without unduly limiting the capacity of the national government to act.

Recommendation 21: *Members of the elected Senate of Canada should be constitutionally barred from accepting appointment to the Cabinet of the Government of Canada.*

Recent interest in Senate reform has been prompted by the failure of the House of Commons in recent elections to provide the governing party with the means of creating a regionally representative cabinet composed of elected representatives. An elected Senate, especially one that used a system of proportional representation, is one way of solving this problem.

We do not think this to be an appropriate solution. An elected Senate should not be conceived solely or even primarily as a reservoir for appointments to the cabinet. Serious though the decline of the cabinet as an agent of regional representation may be, it is an over-reaction to redesign the upper chamber with this one thought in mind. Only twice in this century has the governing party failed to gain any Commons representation in two or more provinces, and on only six other occasions has it been shut out of a single province. What is the Senate to do the rest of the time? What are the other members of the Senate to accomplish? How would such a "now we need it,

now we don't" body establish any greater credibility than the existing Senate? We need regional representation much more and much more often than we need an emergency reservoir for cabinet appointments, and we need regional representation even when temporary crises are not generated by the distribution of party support in the Commons.

The consequences of constitutionally barring Senators from serving as members of the cabinet are threefold. *First,* it would prevent the appearance of direct competition between Senators and Commons backbenchers for cabinet positions. Barring Senators from the cabinet would institutionalize a formal division of labor that would emphasize the difference between the two chambers, and the extent to which the elected Senate complements and supplements the work of the Commons rather than duplicates it.

Second, barring Senators from the cabinet would imply that a different sort of person would be drawn to each of the two chambers. A member of a political party who aimed at a cabinet position would seek nomination to a Commons seat. Senatorial candidates would be those individuals who wished the role of regional spokesman in a legislative chamber instead of the role of a member of the cabinet with executive and departmental responsibilities.

Third, barring Senators from membership in the cabinet would reduce the extent to which Senators were tempted to give a high priority to party political concerns in the hopes of achieving advancement in the form of appointment to the cabinet; it would also reduce the likelihood of regional spokesmen being muzzled or co-opted by the principle of "cabinet solidarity". The imperatives of responsible government mean that a Member of Parliament must represent his *party* first and his region second; the incentives must be for a Senator to represent his *region* first and his party second.

It might be asked what sort of a person would be interested in election to a Senate if it held no prospects of the responsibilities and opportunities of cabinet office. In seriousness, we might well ask the same question of the people who run for the Commons: over 1000 of them run each time around, only a quarter of whom can possibly win, and only one tenth of those winners can enter the cabinet. The attractions for a would-be Senator would be considerably more. He/she would have the opportunity to become a significant and respected regional spokesman. Along with five (or nine) other people in a total body of about 60 (or 100), he would articulate the concerns of the people of his province on national issues. Since no cabinet appointments can be made from the body, it would be clear from the beginning that there could be no stigma in his not receiving such an appointment, no front benchers or backbenchers, no aura of having been "passed over". Once he had won election, one would expect his concerns and priorities to reflect a party bias, but there would be no incentive for him to do this slavishly or blindly. There would seem to be considerable merit in evolving a pattern for a political career in Canada that provides a clear and effective representative

role that is not primarily a stepping stone to cabinet or even Prime Ministerial office. Party ties would continue to affect Senators, and party leadership in the Commons would continue to be an influence on them, but the sharp separation of Senate and Cabinet would contribute to a greater salience of *regional* concerns.

Recommendation 22: *A Senator who accepts appointment to the Cabinet should be required immediately to resign his seat in the Senate, but with the understanding that he not be required or expected to seek a seat in the House of Commons until the next federal general election.*

One of the reasons for the increased salience of the Canadian Senate, and therefore for the enhanced plausibility of Senate reform proposals such as this one, is the recent regionalization of party representation in the House of Commons. None of the so-called "national" political parties is able any longer to be sure of electing MP's from all regions of Canada. The custom of selecting cabinet members from the Commons would bar from the most important decision-making body in the Canadian political process any representatives from precisely those regions already the most prepared to take exception to or to perceive threats in the policies of a government dominated by a regionally based party. At present, the only means that has been found around this dilemma is to bring appointed Senators into the cabinet. The defects of this procedure are obvious, but at least in some cases it has helped.

To create an elected Senate but preclude its members from inclusion in the cabinet, would be to give away a poor solution to the problem of regional representation in the cabinet, and to replace it with no solution. An elected Senate as a means of regional representation cannot be structured meaningfully by ignoring this problem and the imperatives that it generates.

At the same time, we oppose the reduction of the idea of an elected Senate to the role of an emergency back door to the cabinet. Because the House of Commons is a confidence chamber, the high priority accorded to party considerations in that chamber is fully appropriate, but the same considerations do not apply to the deliberations of an elected Senate.

The problem is how to use the representative potential of Senators in the special situations that have recently occurred, without thereby sacrificing the fuller potential of an elected Senate. Only one procedure seems to satisfy both sets of imperatives. In the absence of Commons representation from one or more provinces, a Prime Minister could offer a cabinet position to a Senator. However, the acceptance of a cabinet position should require that he immediately resign his seat in the Senate. A duly elected representative of the region would be serving in the cabinet, and yet the deliberations of the Senate would remain separate from the direct intervention of Ministers of the Crown. In light of the fact that the Senator had been elected in a recent general election, albeit not in the Commons and albeit to a position that he had been obliged to renounce as the price of his appointment to the cabinet, it would

seem justified to extend the "reasonable" length of time during which cabinet members are expected to seek a seat in the Commons until the next general election. At that time, the ex-Senator could consider whether to remain in the cabinet and seek election to the Commons, or to resign his seat in the cabinet and try to be re-elected to the Senate. Because such a Minister should remain accountable to Parliament, the rules of the House of Commons should be amended to allow him to appear before the House to speak on measures relating to his department, or to answer questions about his department.

It seems to us that this solution preserves the best of both worlds. It best preserves the incentives of an elected Senate toward being a regional house rather than a partisan house, while offsetting the shortcomings of the cabinet as a representative body when political exigencies require.

Recommendation 23: *All votes in the elected Senate of Canada should be free votes.*

Recommendation 24: *The political parties of the Senate should caucus separately from their party colleagues in the Commons, although we do not think it desirable that this be expressed as a constitutional prohibition.*

Recommendation 25: *Senators in the elected Senate of Canada should caucus regularly on a cross-party regional basis.*

It is to be anticipated that most of the members of an elected Senate would be members of established national parties, although for reasons already indicated we do not reject the possibility of a significant number of independent Senators. It is therefore useful to consider the possible party political standings in such a chamber. Rough calculations suggest that a Senate elected on the basis of our recommendations (that is, Senatorial elections taking place at the same time as national general elections, with half the Senators from each province coming up for re-election each time) had it been in existence for the last three decades would have looked approximately as shown in Table 8-1 if each province were assigned ten Senators, and as shown in Table 8-2 if each province were assigned six Senators.[32]

[32]The distribution of seats is based on several assumptions: first, that there would have been no change in voter behavior in the changed electoral process; second, that voters would cast their vote in the same way for MP's and for Senators; and third, that "second choices" would break down in the same proportion as "first choices". All three are highly dubious; the purpose was merely to give some idea of the partisan distribution of an elected Senate. This is important, because the possible outcome of the Transferable Vote might well be to level out the swings in popular vote that are so exaggerated by single member ridings, and to generate an upper chamber that did not change much in party political composition from one election to the next.

Table 8-1: Composition of elected Senate (10 per province) Given Previous Voting Patterns

YEAR	LIB.	CON.	CCF/NDP	OTHER
1953	57	31	11	5
1957	50	40	8	6
1958	38	53	8	5
1962	37	53	9	5
1963	42	44	10	8
1965	42	43	13	6
1968	40	47	14	3
1972	40	48	14	2
1974	42	45	15	2
1979	41	45	16	2
1980	40	44	18	2
AVGE:	43	45	12	4

The average party distribution in an elected Senate would be roughly 45/45/14 (10 Senators per province), or 25/30/9 (6 Senators per province) for the Liberals, the Conservatives, and other parties respectively. There would be some swing back and forth over time, but in present conditions we could regard this as a "normal" distribution.

Table 8-2: Composition of elected Senate (6 per province) Given Previous Voting Patterns

YEAR	LIB.	CON.	CCF/NDP	OTHER
1953	36	16	7	5
1957	30	22	7	5
1958	21	35	5	3
1962	20	37	4	3
1963	25	32	3	4
1965	28	28	5	3
1968	27	29	7	1
1972	23	35	6	0
1974	23	35	6	0
1979	24	33	6	1
1980	25	30	8	1
AVGE:	26	30	6	2

The question of political parties and their representation is obviously important for assessing the impact and effectiveness of an elected Senate. This is because political parties are very much a mixed blessing from the point of view of regional representation. On the one hand, political parties recruit political candidates, mobilize and organize political support, and provide for continuity and public accountability. On the other hand, the tight discipline of political parties is a major reason why the House of Commons cannot adequately represent the diverse regions of Canada. It would be both excessive and impractical to try to bar political parties from Senatorial elections (although a significant proportion of independent members in an elected Senate would be most welcome). At the same time, however, much of the potential of an elected Senate would remain unfulfilled if its members

continued the partisan loyalty that so often prevails in the House of Commons, and in the existing Senate.

Our proposals already contain a number of provisions that are intended to encourage Senatorial independence. Because the government of Canada is to be responsible only to the House of Commons, the tight party discipline and the high priority of partisan considerations would be less necessary in the Senate. Because no members of the Senate are to be concurrently members of the cabinet, membership in the Senate cannot be a simple stepping stone to the cabinet, and the "carrot and stick" leverage of cabinet appointments would not apply to relations between government and Senate. The Transferable Vote system would itself encourage Senatorial independence by creating a potential for cross-party electoral support for an articulate regional champion, and reduce the sanction implied by withdrawing the party label from a particular individual. (We assume, but do not describe in detail, appropriate provisions for the nomination and renomination of Senatorial candidates, as well as the public subsidy of serious candidates.) Party ties would remain strong, and party political labels would continue to be the best predictors of voting patterns in an elected Senate, but there would be more room to maneuver for elected Senators who felt a strong and increasing tension between their simultaneous roles as party member and regional representative.

Further accommodations would be desirable, although we appreciate that these can only be indicated as positive features, and could not be legislated or constitutionally entrenched. We include a discussion of them in order to give a clearer understanding of the way we envisage an elected Senate working and intermeshing with the existing institutions and procedures of government. Some of the features that we suggest are already present in the existing Senate of Canada. An elected Senate would be able to employ such features on a more regular basis and to greater advantage.

Because the elected Senate would not be a confidence chamber, every vote should be a free vote, not a party vote. In principle, this is already true of the existing Senate of Canada, but the practice is quite different. In an elected Senate, the degree of independence that is implied by free votes would be more real and more credible as an ongoing feature of the chamber. An elected Senate should not be perceived as a major departure from the existing Senate, but rather as a reform that would permit the Senate to accomplish effectively the purposes it has always been intended to serve, but has never succeeded in fulfilling.

It would not be desirable for Senators to caucus with fellow party members in the Commons, at least not on a regular basis. In our proposals, the Senate would have a membership only one-fifth or one-third as large as the Commons, and within the governing party the ratio of Senators to MP's could be even lower. Just as MP's from less populated provinces are swamped in a majority chamber based on representation by population, so elected

Senators would be swamped by their more numerous counterparts in the Commons. It would not be possible nor desirable to prevent Senators from meeting where and with whom they chose, but the development of a tradition of separate caucusing would contribute to the independence and the credibility of the elected Senate.

It would also be desirable to supplement the cross-regional party caucuses within the elected Senate, with formal cross-party regional caucuses. The Commons is primarily a party chamber but the Senate must be primarily a regional chamber. In such a chamber, more important than the fact that Senators represent different parties is the fact that they represent the same region, that they articulate (though not in the identical form or with the identical priority) the same concerns and interests. The primacy of regional over party concerns should be reflected in the informal as well as the formal procedures of the elected Senate.

As in any modern legislative body, committee work would be very important. Given the smaller size of the Senate, presumably it would employ a smaller number of committees than the House of Commons, each given a broader term of reference. As most Senators would probably be members of political parties, it would be expected committee memberships would parallel the membership of the total body. Hopefully, committee assignments would be of long duration, reflecting experience and expertise.

An elected Senate would be an independent legislative body, scrutinizing the policy initiatives of the government of Canada in the interests of ensuring regional sensitivity within those policies. It would not operate under the shadow of a disciplined majority party, or with the preoccupation of the survival of the government. This independence requires specific powers for committees, and features in the operation of committees, which would evolve as a matter of course but are specified here to give greater understanding of the role we contemplate for an elected Senate and the way that Senate would perform this role.

As is now the case, chairmen of Senate committees would be freely elected by the members of that committee, and not designated, appointed, or nominated by the government. It would not be necessary (although it would not be prohibited) for the chairman of a Senate committee to be a member of the government party. Assignment of members to committees should be by a formal procedure of the whole Senate, and not at the discretion of the party whip.

The independence of the elected Senate should be reiterated in all the formal rules of procedure under which the Senate operated. For example, an elected Senate should retain the power to refer matters to committee whether or not the government recommended such referral or approved of it. By the same principle, the Senate, and not the government, should continue to decide to which committee specific measures should be referred. Similarly, the elected Senate should retain the power to assign staff to committees, hold

public committee hearings, and permit a committee to travel to other parts of Canada or to other countries independent of the approval of the House of Commons or Cabinet.

As noted above, some of these suggestions already exist as formal provisions within the operation of the existing Senate. Our point is that in an elected Senate, no longer operating without a popular base or under a partisan shadow, these formal provisions could become more routine, more credible and more effective. The elected Senate would fulfill, not negate, the purposes contained in embryonic but ineffective form within the existing Senate of Canada.

3. CONCLUSION

The creation of an elected Senate would not be without its attendant problems, although we believe that many of these problems are more apparent than real, and rest more upon a misunderstanding than an understanding of the role that such an institution would be called upon to play. We will indicate in turn a number of these possible problems, and the reasons why we do not see them as sufficient to argue against our proposals for Senate reform.

FIRST, the idea of an elected Senate suffers from the practical impediment of potential serious opposition from those vigilant gatekeepers of constitutional reform, the First Ministers, and specifically from the provincial premiers. The presence of elected Senators would be seen to undercut the capacity and credibility of provincial premiers to speak as the dominant *regional* spokesmen on *national* issues. The lack of an effective instrumentality for the articulation of regional concerns within the national government has generated a political vacuum into which the various provincial governments have been quick to move, and which they might be reluctant to vacate.

We are convinced that the reluctance of the provincial premiers in this regard stems from a fundamental misunderstanding that has been fostered by the defects of the existing institutions of the national government. In any federal system, there must be problems generated by the activities of two different levels of government within jurisdictions that cannot be exhaustively described in terms of watertight compartments. The importance of areas of "de facto concurrent jurisdiction" imply a need for ongoing intergovernmental co-ordination, and this in turn implies a role for provincial governments that cannot realistically be delegated to another set of elected representatives. As well, however, in any federal system there is a need for institutions within the national government that register a special sensitivity to regional concerns in the formulation of national policy. These two aspects of regional/national interface may overlap, but they are logically distinct. In the absence of national institutions that are able to meet this second set of demands effectively, provincial governments have inherited this responsibility, although they are inherently poorly suited to discharging it.

The creation of an elected Senate to provide for effective regional representation does not reduce the need for adequate structures for intergovernmental co-ordination, nor does it displace the role of provincial governments within those structures. The separation of the two logically distinct sets of problems, and the assignment of each to distinct institutions and procedures, would reduce the overload on existing political structures and permit *both* sets of problems to be dealt with more effectively. The opposition of provincial premiers to the idea of an elected Senate stems from a misunderstanding of the idea of regional representation. The same misunderstanding has generated the idea of a body of intergovernmental coordination in the form of the Council of Provinces as a mechanism for regional representation, a purpose it could not fulfill. There is no inherent conflict between the idea of a strong Senate and the idea of strong provincial governments.

SECOND, the idea of an elected Senate would seem equally unpalatable to the Prime Minister, the head of the national government. The creation of such a body with real power to deploy in the interests of regional representation would come largely at the cost of the existing national government. The Prime Minister would be harassed on one side by ten provincial premiers, and potentially blocked on another by 60 to 100 elected Senators. Why should he acquiesce in such a diminution of his effective power by further complicating the already difficult task of governing a country as diverse and as divided as Canada in the 1980s? It is understandable why national government proposals for upper chamber reform usually involve fairly weak bodies, such as the House of Federation proposed in 1978.

This anticipated or potential opposition from the national government to our proposal rests on a fundamental misunderstanding. It remains true, and we do not challenge, that the government of Canada retains the primary responsibility for the formulation and the execution of national policy. If any single group "speaks for Canada", it is the government of Canada. At the same time, it is implicit in the nature of federalism that in intergovernmental matters, the government of Canada must share the stage with provincial governments, and accommodate the demands expressed by these governments. The mandate and legitimacy of provincial governments within their jurisdictions is as impeccable as that of the national government itself. In a parallel sense, in the refining and fine-tuning of national policy, the national government must share the stage with effective spokesmen for the various regions who need not and should not be the provincial governments. This complexity is not an attack on the powers or the prerogatives of the national government, nor is its institutionalization a subtraction from those powers properly understood.

The choice is not whether Canada shall have or not have strong regional loyalties; history has already made that choice for us. Rather, the choice is whether such forces shall be channelled and accommodated by providing

them with an effective focus within the institutions of national government, or whether our national institutional arrangements will largely ignore federalism, leave provincial governments as the only credible focus for regional concerns, and flirt with the possibility of the extreme manifestation of frustrated regionalism — separatism. Limitations on formal power that turn it into *effective* power over a *unified* nation are not too high a price to pay.

THIRD, the creation of a more powerful Senate would seem automatically to imply a diminished capacity for action on the part of the elected Commons. One of the virtues of the parliamentary system is its capacity for central direction and prompt action in the face of crisis or challenge, along with the clear accountability generated by the principle of responsible government within an elected House of Commons. A strong elected Senate would seem to be purchased at the cost of this potential, and would carry with it the potential of political deadlock and resulting legislative and governmental impotence.

This objection arises from a simplistic understanding of the nature of democracy, and a failure to appreciate the implications of federalism. One cannot escape the fact that a federal country is difficult to govern, one that resists simple solutions. The diversity that necessitates federalism complicates the process of generating and implementing national policy. The realistic choice is not between a government and Commons free for bold unfettered action, and a government and Commons prevented from undertaking any initiatives. It will always be the case that national policies will have different impact, and differing degrees of acceptance, in different parts of country. The question is whether these differences will be accommodated or allayed within the process of formulating national policy, or whether they will express themselves after the enactment of national policy, in the form of hostility, alienation, or the mobilisation of counterpolicies through provincial governments. Majority rule short of majority tyranny, and regional power short of automatic and permanent deadlock, must both be entrenched features of any effective federal compromise. The costs of ignoring either side of this dichotomy are, in the long run, much greater than the costs of accommodating them. The central concern is not the speed, but the effectiveness and acceptability, of national government response to national problems. This will be enhanced, not undermined, by an elected Senate serving the purpose of effective regional representation.

Against these pseudo-problems, we must balance the very real and significant benefits that an elected Senate would accomplish. The citizens of every region in Canada would have elected representatives from several political parties within a powerful Senate whose representation was biased toward the less populated regions of the country, and whose limited numbers maximized the opportunities for participation of all Senators. These elected Senators would possess a clear mandate and a democratically impeccable legitimacy for articulating regional concerns in the formulation of national

policy, and the Senate would have sufficient power to ensure that these concerns would be considered and, when possible, accommodated. The advantages of responsible government, and the direct accountability of the government of Canada through the Commons to the electorate on a basis of representation by population, would not be undermined, and the procedure for over-riding Senate opposition would recognize the supremacy of the House of Commons in clear-cut situations. The interaction of the national and the provincial governments, in either the First Ministers Conference or the Council of Provinces format, could deal directly and exclusively with intergovernmental problems and coordination, without spilling over into the related but logically distinct problem of regional representation in the formulation of national policy. The duties and the interactions of the various institutions of the national and provincial governments would be much more clear-cut and straightforward, and the resolution of political problems facilitated.

These benefits could be achieved at minimal political cost or risk, in that the elected Senate would replace an appointed Senate that is widely acknowledged as having failed its intended function.

No political reform can be perfect or risk-free. Nor do we deny the fact that there would be transitional problems in establishing such a new body in the place of the existing Senate, although they would not be insurmountable. The solution to the problem of regional representation in national policy would be well-served by the creation of an elected Senate, as the best contender in a rather limited field.

IX. SUMMARY LIST OF RECOMMENDATIONS

1. The resolution of the problem of effective regional representation in Canada should be sought primarily through reforms to the Senate of Canada.

2. The reformed upper chamber of the Parliament of Canada should be called the Senate of Canada.

3. Members of the Senate of Canada should be directly elected for limited terms.

4. The basis of representation in an elected Senate should be equal representation for each province.

5. The Yukon Territory and the Northwest Territories should each be entitled to elect members to the elected Senate of Canada.

6. Each province should elect a total of from six to ten Senators to the new Senate of Canada.

7. Elections to the Senate of Canada should be held at the same time as national general elections, and Senatorial terms should be measured in terms of the life of a parliament.

8. Senators should be elected to a term to be defined as the life of two parliaments, and only one-half of the Senators of any province should be elected at any single national general election.

9. Senators should be elected at large on the basis of a single province-wide constituency.

10. Senators should be elected by the transferable vote.

11. The government should be responsible only to the House of Commons, and not to the elected Senate of Canada.

12. The elected Senate of Canada should not have the power to ratify international treaties or the appointment of ambassadors.

13. The appointment of a Justice of the Supreme Court of Canada should not be subject to ratification by the elected Senate of Canada.

14. The appointment of members to designated national boards, agencies and tribunals should be by nomination of the national government subject to ratification by the elected Senate of Canada.

15. The elected Senate of Canada should have the power to ratify the extension of the invocation of the emergency power beyond a constitutionally stated maximum period, the power to ratify the exercise of the declaratory power, and the power to ratify the exercise of the powers of reservation and disallowance if such are retained in a reformed constitution of Canada.

16. Within the process of constitutional change, the role of the national parliament should include a full veto power for the elected Senate.

17. The elected Senate of Canada, as a national institution and the

upper chamber of a bicameral national legislature, should be formally recognized as an integral part of the formulation of national policy.

18. A standing joint reconciliation committee should be created to settle disagreements between the Senate and the House of Commons by the formulation of mutually acceptable compromises.

19. With regard to ordinary legislation the negative vote of the Senate should be over-ridden by repassage of the rejected legislation through the Commons by an unusual majority.

20. The elected Senate of Canada should have an absolute power of veto not subject to any over-ride by the House of Commons on such matters as:

— The amendment of the constitution of Canada.

— The ratification of nominations for appointment by the Government of Canada.

— The ratification of the exercise by the Government of Canada of its extraordinary powers.

21. Members of the elected Senate of Canada should be constitutionally barred from accepting appointment to the Cabinet of the Government of Canada.

22. A Senator who accepts appointment to the Cabinet should be required immediately to resign his seat in the Senate, but with the understanding that he not be required or expected to seek a seat in the House of Commons until the next federal general election.

23. All votes in the elected Senate of Canada should be free votes.

24. The political parties of the Senate should caucus separately from their party colleagues in the Commons, although we do not think it desirable that this be expressed as a constitutional prohibition.

25. Senators in the elected Senate of Canada should caucus regularly on a cross-party regional basis.

APPENDIX A

POLITICAL SCARECROWS

In any general discussions of regional representation or constitutional reform, there inevitably crop up one or more of a number of pseudo-arguments. These are presented, apparently in all sincerity, as conclusive and solid considerations that pre-empt or reject proposed solutions, and they present themselves as plausible and realistic common sense. Some of these pseudo-arguments have gained such acceptance that they have practically become the conventional wisdom. On closer investigation, however, these pseudo-arguments collapse, resolving into assertions that are either false or, more often, irrelevant. The problem is that precisely because they have attained the status of conventional wisdom, they all too often do not receive this closer investigation, and are allowed to stand as apparently devastating "one-liners".

We have chosen to call these arguments "Political Scarecrows". Like scarecrows, they have a fearsome appearance, and on first glance seem to provide ample reason to shear off and look for another field. As with scarecrows, their terrifying aspect vanishes on a second and more informed look. On the assumption that it would be a useful service to map the location of some of these scarecrows for the benefit of other travellers in the fields of constitutional reform, we attach in this appendix a partial (but by no means exhaustive) list, together with our reasons for rejecting them.

Political Scarecrow 1: *"Prince Edward Island is so small that it is absurd to pretend it is equal to the other provinces".*

It is obvious that Prince Edward Island is small, as provinces go. The whole island fits easily into Lake Winnipeg five times over, and every other province in Canada contains at least one city of a population comparable to P.E.I.'s 118,000. But to say that Prince Edward Island is small is not to say that it is *too* small, let alone to answer the submerged question "too small for what?".

Table A-1: Comparison, smallest unit in federal systems

COUNTRY	SMALLEST UNIT	POPULATION	% OF TOTAL	RATIO*
Australia	Tasmania	402,866	2.81	11.86
W. Germany	Bremen	756,000	1.20	22.66
Switzerland	Uri	33,600	0.51	33.53
Canada	P.E.I.	118,229	0.49	69.90
U.S.	Alaska	302,173	0.14	66.03
India	Sikkim	204,760	0.03	431.44

Note: *ratio between population of largest and smallest constituent unit

As Table A-1 shows, Prince Edward Island is not so small, either in absolute population or in its share of the national population, as not to be comparable with other units in other federal systems.

There is nothing about Prince Edward Island that makes it stand out from such a list as an unusually absurd candidate for full membership in a federal system. Provinces exist in other federal systems that are smaller in absolute population, in their share of the national population, and as a ratio to the largest province. Among the diversities that federalism can accommodate is diversity in the size of the provincial unit.

But if suggestions that Prince Edward Island is too small are unsupportable, the use to which the argument is put is equally so. The *premise* might be that Prince Edward Island cannot be treated the same as Ontario. But too often this argument is used to conclude that British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, or Newfoundland cannot be given the same role in constitutional amendent or the same representation in an upper chamber as Ontario or Quebec.

Within the context of a federal system, there can only be one response to Political Scarecrow 1. Does Prince Edward Island equal Ontario? Yes, because both are provinces in the same federal country.

Political Scarecrow 2: *"It is absurd to consider the idea of equal representation in an upper chamber because the population is so concentrated in the two central provinces."*

The element of truth in this argument is that compared with other federal systems, the population of Canada is very much concentrated in the two central provinces. The flaw in this argument is that it makes equal representation in an upper chamber *more*, not *less*, essential.

The *more* unequal the distribution of population between the provinces in a federal system, the *more* the smaller provinces need the protection of equal representation in an upper chamber. This is so, because the measure of the degree of concentration is also a measure of how likely it is that the population of a smaller province will face the decision of a national majority that excludes it. The interests of the larger province are always protected in the lower house, which is based on the principle of representation by population, and it is also the confidence chamber on which the survival of the national government depends. Precisely because a high degree of population concentration means that smaller provinces cannot be sure of offsetting this preponderance of strength in the lower chamber, they need the reassurance of a strong upper house that will represent the people of the regions on the basis of the province in which they live, not on the basis of population.

If Canadians were satisfied to be ruled by simple majoritarianism, they would not live within a federal system, and they would not support strong provincial governments, and there would not be whole stretches of the country within which candidates of the national ruling party are lucky to

place better than third in national general elections. Since all of these things *do* exist, the safety valve of equal representation in an upper chamber of significant strength is necessary, the more so because of the high degree of population concentration. The fact is clear; the implication is the opposite from what is implied by Political Scarecrow 2.

Political Scarecrow 3: *"We do not need any major constitutional change, because the separatist threat will blow over."*

In May, 1980, the people of Quebec voted solidly against the sovereignty-association option in a public referendum that must rank among the most significant events in Canadian political history. The building momentum that had propelled this country into a major crisis seemed suddenly to dissipate. What has transpired since has aggravated rather than reduced the factors which gave birth to Quebec separatism. Quebeckers who rejected sovereignty association voted for a new federalism which would enhance their role as masters in their own house. The federal government's constitutional package lessens rather than increases the degree of political sovereignty Quebec and all other provinces now enjoy.

The Quebec referendum was at most a major battle, and not the war. The forces of regionalization in this country that have been developing since at least the late 1950s are strong, and they engage the loyalties of many Canadians. Nothing suggests a major or long-term reversal of these trends.

The danger for Canada lies in the fact that the natural focus of regionalizing forces under the present institutional arrangements is the provincial government. The sole political alternative is a central government whose institutions make no *formal*, and only ineffective *informal*, accommodation to the strong feelings of regional identity and loyalty, but operate instead on a basis of simple majoritarianism. In the present context of Canadian politics, regionalism means provincialization. The alternative is to create strong institutions *within* the national government to accommodate these regional forces. Given such an institutional opportunity, regionalism could mean federalism, and regional identities could fit and form within the national government.

Regionalism in Canada is *real*. Rather than hoping it will go away, Canadians should be striving to coopt regionalism in the cause of Canadian federalism, with effective regional representation as the means.

Political Scarecrow 4: *"The only important political division in Canadian politics is the one between French Canada and English Canada."*

It is often suggested (and even more often taken for granted) that Canada contains only two groups whose concerns must be reflected in national policy generally and constitutional change in particular. These two groups are "French Canada" and "English Canada". The entity of French Canada is fairly straightforward, since it exhibits sufficient concentration that we can identify the government of Quebec as the major political focus for the

drives, fears and aspirations of most French Canadians. But English Canada possesses no such clarity or unity. It is really only a residual category, created by subtracting "French Canada" from "all of Canada", and it possesses no natural political focus and no enduring common political purposes.

The French Canada/English Canada dichotomy is simply the latest form of one of Canada's enduring political myths, namely the notion that the only reason that there is any need for this country to be federal is the existence of the province of Quebec with its Francophone majority. This myth is based upon a particle of truth, in that the political deadlock which resulted from attempting to govern Upper and Lower Canada within a single unitary entity was one of the strongest reasons for Confederation. However, just because Quebec remains in some sense the logical successor to Lower Canada, does not mean there is a single political successor to Upper Canada. Preoccupation with this cultural dichotomy virtually defines out of existence, or at least out of significance, the grievances and concerns that grow out of political territories less inclusive than the arbitrary and polyglot "English Canada". It subsumes under the medium of language all the problems that preoccupy Canadians today.

The problems of regional representation in Canada today go far beyond the "French problem". Canada consists of many regions, and all must be included in the formation of national policy if "national unity" is to be more than a slogan masking the domination of one region of the country over another. That one of these many geographical regions is also culturally distinct complicates and sometimes exacerbates the problem, but it does not preempt the search for a solution.

Political Scarecrow 5: *"There is no need to talk about regional representation, because Canadians are already represented by their elected members of parliament."*

The suggestion that regional representation is a problem in Canada that requires a new institutional focus for its effective resolution is not in any way intended to detract from the efforts and activities of Members of Parliament. The problem lies not in the individuals, but in the chamber within which they operate, and the restraints this puts upon their representative function.

The House of Commons is primarily a party House, a fact forced upon it by the fact that it is a confidence chamber. Because governments stand or fall on votes in the House, Members of Parliament are organized into disciplined parties. Within these parties, MP's are expected to follow a party line that may not always jibe with the interests and demands of the people of their region of the country. More serious, when regional differences become political party differences, as they have been becoming in recent years, the views of Members of Parliament as regional representatives cannot pass the party barrier, and the voice of a region may go unheard within government. It is a cruel joke that our representative system plays on Members of Parliament. On

the one hand, they are elected to be part of a party "team", to be a loyal supporter of the party leadership, and Canadian voters have usually been harsh in their treatment of individual MP's who break from their party for whatever reason. On the other hand, they are expected to represent their region and their constituents within the Commons and within the party, and to develop the leverage that will require party policy to respond to regional concerns. How these two are to be reconciled is a problem that is usually without an answer.

The Member of Parliament suffers the further handicap to effective regional representation that the House of Commons is based upon the principle of representation by population. Within party caucuses, within committees, within the cabinet as within the House of Commons itself, a region receives representation in proportion to its share of the total population. This must mean less representation, and therefore less power, for smaller regions.

It is not that Members of Parliament do not represent their constituents, but that the House of Commons operates under a double handicap in trying to represent those constituents effectively and adequately on the basis of the *region* in which they live. Representation is a complex concept that comprises many aspects or dimensions, and it is no criticism to suggest that it might require more than one set of representative institutions to reflect all relevant dimensions. The first logical division of labor for national policy purposes is representation on the basis of population, and representation on the basis of region.

Political Scarecrow 6: *"There is no need to talk about regional representation, because the regions are already represented by their provincial premiers."*

On matters falling within provincial jurisdiction, the provincial premiers have a clear and democratically impeccable responsibility to represent the people of their province and to strive to serve their interests.

On matters that fall within areas of concurrent jurisdiction, or which necessarily involve a significant degree of inter-governmental coordination and cooperation, provincial premiers have a clear responsibility to act, and to seek effective input on the formation of federal policy.

On matters that fall within exclusive national jurisdiction, the situation is rather more complicated. In any country as diverse as Canada, where the impact of national policy may vary so much from one region to the next, there is a need for procedures that will ensure that those policies are sufficiently sensitive to regional concerns and preferences, that narrow national majorities do not blindly force their way at whatever cost to the sentiments and feelings of other Canadians. Minority rights are always the complement to majority rule in the theory of democracy. The role of providing the input on

regional concerns has fallen to the premiers, but their mandate to speak on strictly national policy is questionable, and their effectiveness is limited.

Canadians are well represented by their premiers in areas of provincial jurisdiction, and in policies involving intergovernmental cooperation. This in no way undermines the argument that Canadians still need national institutions specifically designed to effectively promote regional sensitivity in national policy. A powerful upper chamber reflecting regional concerns is compatible with strong provincial governments, and it is also compatible with a strong national government.

Political Scarecrow 7: *"Any principle other than simple and straightforward rule by the majority is undemocratic."*

One of the basic principles of democracy is the idea that on any specific question, the opinion of the larger number should prevail. This is often inaccurately expressed as the notion of majority rule; in fact, our political system functions on the basis not of majorities but of pluralities. Many members of parliament were elected without obtaining more than half the votes in their riding, and many governments enjoy a majority within their respective Houses without having gained a majority of the popular vote.

A second principle of democracy is that of minority rights. It is the special feature of a federal system that among the minorities whose rights and interests must be recognized and protected are minorities who constitute regional majorities. The operation of a democracy in a federal system must preserve a balance between majority rule and minority (including and possibly even especially regional) rights and interests.

The "50% + 1" implied in majority rule is an important principle, but not the only one (as when it is discovered that there is one more cannibal than non-cannibal in the life-boat). The rule of the majority through an elected assembly based on representation by population is one dimension of legitimate decision-making in a federal system. But that majority rule must be effectively guided by a concern for minority regional interests. On many issues, it is not enough to have a narrow majority, but a consensus that includes strong support from all significant regions of the country.

Democracy does not mean tyranny by majority. It means attaching importance to numbers, but not in a way that precludes attaching importance to other things as well.

Political Scarecrow 8: *"Proportional representation is too complicated; Canadians prefer their electoral system to be simple and straightforward."*

In a single-member plurality-vote system of the sort currently used in Canada, the voter marks an "X" beside the name of the candidate he would prefer to be elected. In a Transferable Vote system, the voter marks a "1" beside the name of the candidate he would prefer to see elected, a "2" beside the name of the most acceptable alternative, and so on for as long as he

wishes to indicate a preference. Neither operation seems unreasonably complex or difficult. It could become complicated, of course, if the voter were required to rank every single candidate in some order, but this seems an absurd extension of the Transferable Vote.

If the suggestion is that Canadians want things kept simple and straightforward not so much in the act of voting as in the other procedures that are involved in an election, then the person making the suggestion must not have read the Representation Act 1974. This document, which lays out the procedure whereby census figures are translated into the assignment of Commons seats to provinces, reads like either a sure-fire cure for insomnia, or a bureaucratic self-parody bordering on genius. It takes half a page of fine print to express the idea that no province will ever lose a seat in redistribution. The formulae are so complicated that when some academics attempted to use them to predict how many seats each province would receive for the 1979 election, they missed by over a dozen seats.

In the process of voting, marking a "1" is no more complex than marking an "X", and the supposed difficulty of voting in a Proportional Representation system is merely one of Canada's more enduring, and less intelligent, political myths. What the PR system requires is not unusually intelligent voters able to penetrate its arcane procedures, but only politicians who are willing to give the voters the means of expressing discriminating judgments.

Political Scarecrow 9: *"Reforms to the procedure for electing members of the Commons are unacceptable because they would create two different types of Members of Parliament."*

In response to the problems created by the recent regionalization of party support, and therefore of party representation in the Commons, some recent proposals have suggested the need for electoral reforms. These assume that Canadians would continue to elect MP's in single-member plurality-vote constituencies, but propose that additional MP's should also be either elected at large from party lists, or selected from among those losing candidates who received the largest share of the riding vote. One of the rejoinders to these plans that is considered the most devastating is the "one-liner" that it would create two different classes of MP's.

It is difficult to take this objection seriously, or to see what intelligent response one could make beyond "So what?". The alleged homogeneity of the present roster of MP's is no more than a purely formal attribute. The House of Commons routinely contains within its ranks members who can be differentiated on a number of significant criteria, including the following:

— Government members versus opposition members.

— Front-benchers versus back-benchers.

— Members elected in general elections versus members elected in by-elections.

— Members elected by narrow pluralities, and members elected by massive majorities.

— Members elected from ridings coinciding with identifiable communities, versus members elected from arbitrary blocs carved out of the middle of large cities, or huge sprawling northern areas.

All sit in the same House and cast equal votes, without any obvious problems about different "classes" of MP. The addition of yet another way to distinguish one group of Members of Parliament from another is hardly a serious, let alone a pre-emptive, concern.

Political Scarecrow 10: *"A powerful upper chamber would be inefficient because it would impose unacceptable time delays on the actions of the national government."*

In the absence of an effective upper chamber representing regional concerns within the process of national policy, laws can be passed and programs created that reflect the values and preferences of people in only some parts of the country. Let us consider a hard case: let us assume that a measure is passed through Parliament that is so offensive to feelings in many regions in Canada that it provokes immediate and widespread opposition. This is the only kind of measure that would provoke a regionally sensitive upper chamber to extensive time-consuming delay as a means of forcing changes and compromises. Under present institutional arrangements, discontented regional majorities that are also national minorities are obliged to act through their provincial governments to protest publicly, to initiate court challenges, and (where possible) to undertake countervailing actions within provincial jurisdiction to offset the impact of the national program. After the time delay imposed by court proceedings, the outcome is a national policy reduced in its effectiveness both by a lack of public support in many parts of the country and by a lack of provincial government cooperation. The point is not whether a procedure costs time, but whether it is time spent to good advantage.

The alternative is to have a powerful regionally sensitive upper chamber able to impose delay *before* enactment, within the legislative process, where this delay is necessary if adjustments to national policy are to accommodate regional concerns and allay regional fears. More probably, a competent government would seek to avoid such delays by including such regional compromises and concessions before the measure reached the upper chamber, even if that redrafting itself took some further time. The most inefficient procedure is not that caused by the *presence* of a powerful upper chamber, but that imposed by its *absence*.

Political Scarecrow 11: *"A powerful upper chamber would create endless political deadlock."*

A possible outcome of any bicameral national legislature that contains two powerful Houses is disagreement between the two that would prevent

action, and beyond this, disagreement between the two that would spill over into broader areas and block action on a wide range of legislation. This spectre looms whether the upper chamber is elected or made up of provincial government delegations.

There are two reasons why this danger should not be exaggerated. First, the people in both chambers are elected representatives or delegations representing elected representatives. As elected representatives they face periodic public accountability in the process of re-election. It is seldom, and only under the most unusual of circumstances, enough for politicians to beat on their chests and say "no" very loudly to gain the votes needed for survival in office. More commonly, they must be able to show the electorate the services they have provided, the needs they have met, the contributions they have made to public well-being. Deadlock is a negative achievement, and only in exceptional circumstances would it be an effective banner to wave in an election contest. Even more rarely would both sides in the deadlock (and every deadlock requires two intransigent sides) be able to use inaction to gain re-election.

Second, politics is the art of the possible, and the effect of a powerful and effective upper chamber would be to shift the boundaries of practical political achievement for the national government. Some things might go undone that would otherwise have been done, and some might be done differently from the way they would have been handled otherwise, but those changes would be made to avoid widespread regional opposition. The outcome would be regionally sensitive national policy supported by a federal consensus.

Both the self-interest of politicians accountable through the process of re-election, and the practical imperatives of politics as the art of the possible, would promote compromise over deadlock, and even a powerful upper chamber would seldom be forced to such extremes. The point of such a body is not to create deadlock, but through the potential of deadlock to promote more acceptable policy. Like many weapons, it is most effective if used sparingly.

Political Scarecrow 12: *"The Council of Provinces idea is unacceptable because the provincial delegates would not all be elected officials."*

One of the most frequently criticized aspects of the Council of Provinces proposal is the fact that in the plenary sessions, and even more certainly in the committee meetings, provincial governments would be represented by civil servants as well as, and sometimes instead of, elected representatives.

If the suggestion is that these provincial delegations should be directly elected, it must be rejected out of hand. The Council of Provinces is a mechanism of intergovernmental coordination, and such a body cannot

promote intergovernmental cooperation unless the governments are themselves present through their chosen delegates.

It would in many cases make little practical difference, especially in committee proceedings, if the provincial government point of view were expressed by a cabinet minister, or by a backbencher, or by a civil servant. All would be instructed by the provincial government and all would report back and be accountable to that government. The important principle of the Council of Provinces is that the views and opinions of the provincial government be expressed and allowed to have impact on policy; it matters little who serves as the mouthpiece.

The matter would be somewhat different in the case of casting formal votes in a plenary session, and the Pepin-Robarts report contains a most reasonable and workable solution: the vote of the provincial delegation in formal proceedings of the Council of Provinces could be cast only by an individual of cabinet rank. The possible attendance and participation of provincial civil servants in other affairs of the Council is not a problem, but a pseudo-problem.

Political Scarecrow 13: *"The political party composition of a Council of Provinces would benefit the Conservative party and hurt the Liberal party."*

The rise of the Conservatives in provincial politics during the last decade would mean that a Council of Provinces composed of provincial delegations, whether on the basis of equal representation for all provinces or a sliding scale based on population, would hold more Conservative delegations than Liberals. The margin of the Conservative plurality has increased steadily throughout the decade, while Liberal provincial support has dwindled to the point where since 1979, for the first time since Confederation, there is not a single Liberal provincial administration in Canada.

However, the bonds uniting federal and provincial parties, even those that share a common partisan label, are weak. It is a fundamental mistake to regard provincial parties as simple extensions, and provincial leaders as loyal subordinates, of the national party and its leader. Lack of firm support from Alberta Conservative Premier Lougheed and Ontario Conservative Premier Davis contributed to the fall from office of Conservative Prime Minister Clark, and recently two Conservative provincial governments have supported the patriation plans of a Liberal Prime Minister over the objections of the federal Conservatives and five other provincial Conservative premiers.

There is nothing surprising about this. Governments must respond to the practical demands of holding office, and this forces shifting alliances or collisions with other governments responding to similar practical demands. Political party affiliation is only one of the factors that a government must consider, and not one that ranks very high on the list. Provincial premiers cannot simply answer "Ready, aye ready" to a national leader, but must appraise their position in the light of the needs of their own province and the

demands of their own political standing within that province. This is true now in such political forums as the First Ministers Conference, and it would be true in the future should a Council of Provinces be created in the interests of regularizing intergovernmental coordination and cooperation.

A Council of Provinces would not benefit a national Prime Minister merely because of the party label he wears. Rather, it would benefit any Prime Minister who was able to respond to the political imperatives of the regional demands articulated through the provincial governments, and would hamper any Prime Minister who could not.

Political Scarecrow 14: *"A Council of Provinces composed of provincial government delegations would be a "revolving door" legislature of endlessly shifting membership, and therefore ineffective as a legislative body."*

It misses the point to describe and criticize a Council of Provinces as a body whose proceedings would be constantly disrupted by the coming and going of rotating provincial government delegations. The real member of the upper chamber would be the provincial government, a body of considerably greater continuity and resources than any one individual, this member being represented by delegations selected for limited periods and specific proposals.

Viewing provincial governments, rather than the individuals making up any specific delegation at any one time, as the real members of the Council of Provinces would reduce the perils that are thought to flow from constantly changing membership. However, at first glance, it would seem to do so only at the cost of letting such instability in through the back door. Within any four-to-five year period, there must normally be one federal general election, but at least ten provincial general elections. In any twelve-month period, therefore, two or three or even more provincial governments might change, even during upper chamber consideration of a single bill, and this could have significant implications for the disruption of the legislative process. In practice, however, the problem seems to be one that is easily exaggerated. During the period from 1945 to March 1, 1981, there have been more than one hundred provincial elections but only 23 changes of provincial governments, an average of one every eighteen months. For a Council of Provinces, this would mean that one-tenth of the chamber would be changed every year and a half, a rate of turnover that compares favorably with the House of Commons. Since World War II, we have held federal elections a little more often than once every three years, and on average the percentage of new members in each House has been around 40. This generates an annual average rate of turnover approximately double what is to be anticipated of the proposed Council of Provinces. No one, of course, would deny that such a high rate of turnover has hurt the efectiveness of the House of Commons, but the point is that it has not prevented the House from working; a much lower turnover rate would hardly debilitate the Council of Provinces.

SUMMARY LIST OF POLITICAL SCARECROWS

Political Scarecrow 1: "Prince Edward Island is so small that it is absurd to pretend it is equal to the other provinces."

Political Scarecrow 2: "It is absurd to consider the idea of equal representation in an upper chamber because the population is so concentrated in the two central provinces."

Political Scarecrow 3: "We do not need any major constitutional change, because the separatist threat will blow over."

Political Scarecrow 4: "The only important political division in Canadian politics is the one between French Canada and English Canada."

Political Scarecrow 5: "There is no need to talk about regional representation, because Canadians are already represented by their elected members of parliament."

Political Scarecrow 6: "There is no need to talk about regional representation, because the regions are already represented by their provincial premiers."

Political Scarecrow 7: "Any principle other than simple and straightforward rule by the majority is undemocratic."

Political Scarecrow 8: "Proportional representation is too complicated; Canadians prefer their electoral system to be simple."

Political Scarecrow 9: "Reforms to the procedure for electing members of the Commons are unacceptable because they would create two different types of Members of Parliament."

Political Scarecrow 10: "A powerful upper chamber would be inefficient because it would impose unacceptable time delays on the actions of the national government."

Political Scarecrow 11: "A powerful upper chamber would create endless political deadlock."

Political Scarecrow 12: "The Council of Provinces idea is unacceptable because the provincial delegates would not all be elected officials."

Political Scarecrow 13: "The political party composition of a Council of Provinces would benefit the Conservative party and hurt the Liberal party."

Political Scarecrow 14: "A Council of Provinces composed of provincial government delegations would be a "revolving door" legislature of endlessly shifting membership, and therefore ineffective as a legislative body."

APPENDIX B

MEASURES OF POPULATION CONCENTRATION

We have suggested that one (although by no means the only) factor contributing to the need for mechanisms for regional representation is the question of the distribution of population between the provinces. The question is how we are to measure this concentration of population. A number of measures might be suggested; these are each used in turn in Table B-1 as a basis for the comparison of population distributions in Canada with those of other federal systems. All have some merit and plausibility as a measure of population concentration, but the figures they generate suggest different conclusions.

Table B-1: Concentration of Population, selected countries

COUNTRY	(2) NO. UNITS	(3) % LARGEST UNIT	(4) % LARGEST TWO UNITS	(5) LARGEST AND SMALLEST UNIT	(6) P.C.I.
Australia*	6	36.04	63.56	11.86	17.35
India*	22	16.31	26.72	431.44	21.70
W. Germany*	10	29.00	46.90	22.66	22.37
Switzerland	22**	17.67	33.35	32.72	23.85
United States*	50	9.82	18.80	65.47	25.65
Canada*	10	36.04	63.23	69.31	27.29

Notes: *excludes territories; total populations adjusted accordingly
**half-cantons" combined by pairs into "cantons" as per Swiss census data

Column 2 indicates the number of units (provinces/states) in the country being considered (note that Switzerland is considered as 22 cantons rather than 19 cantons and 6 half-cantons for purpose of calculations)
Column 3 indicates the percentage of the total population (excluding territories) in the largest single unit
Column 4 indicates the percentage of the total population in the largest two units
Column 5 indicates the ratio between the largest and smallest unit
Column 6 indicates the "population concentration index"

The first possibility is to measure population concentration by considering the ratio between the populations of the largest and smallest political units in the country in question. On this basis, we could suggest that India has the most concentrated population of any federal system, followed by Canada, the United States, Switzerland, West Germany and Australia. The weakness of this measure is that it isolates only two of the constituent units to generate the index, ignoring the four or twenty or forty-eight that may lie in between. Since a comparison of the two extremes tells us nothing about the population distribution in all the rest, this index might be most misleading.

A second possible measure would be to consider the portion of the total population that is in the largest single unit, or the largest two single units. This indeed seems less haphazard, and more directly connected with the factor we wish to measure. Based on this index, (and as it happens, it makes no difference whether we consider the first one or the first two units), Australia and Canada are almost neck and neck as the most concentrated systems, followed by West Germany, Switzerland, and India, with the United States well back as the most decentralized system. The drawbacks of this measure are two-fold; first, it considers only one (or two) of the constituent units, neglecting the rest, in calculating the degree of population concentration; and second, the fact that this rank ordering parallels a rank ordering of federal systems in order of the number of constituent units (from smallest to largest) raises some real doubts as to what it is that this index is measuring.

A further alternative might be to consider the minimum proportion of the constituent units that are necessary to generate a national majority. Since we are speaking off *proportions* rather than of *numbers* or units, this would seem to have some built-in correction for the surprising diversity of province/states that are found in contemporary federal countries. On this ranking, the United States now emerges as the having the most concentrated population of any federal system, with only 18.0% of the constituent units needed to muster 50% of the national population (9 out of 50); Canada is second with 20.0% (2 out of 10); Switzerland and India are tied with 22.7% (5 out of 22); West Germany follows with 30.0% (3 out of 10); and Australia trails with 33.3% (2 out of 6).

All these are suggestive, but the rankings they indicate are puzzling. Whatever the measure, Canada emerges as one of the most concentrated of federal systems. The United States and Australia, however, both rank first on some scales and last on others, suggesting that not all the indices can be measuring the same thing.

We would suggest the use of a more objective and adequate measure of the concentration of population among the constituent units of a federal system, namely the measure that we call the Population Concentration Index (P.C.I.). Specifically, we would employ a Lorenz curve to generate a single number which indicates the degree of population concentration in one country at one time. For this Lorenz curve, the horizontal axis would indicate the proportion of constituent units (going from "zero" to "all"), and the vertical axis would measure the proportion of population as we add successive constituent units from the smallest to the largest. On such a curve, a straight line rising from the lower left to the upper right corner would represent a condition of perfect equality of distribution (each unit having the same population), and would receive a concentration score of 0. For any other distribution, measuring the area between the curve and the straight line would generate a measure of the degree of departure from this "ideal" situation. Since the Lorenz curve is a common statistical measure of the

degree of concentration (used, for example, to measure the distribution of income among portions of the population), it would seem to provide an adequate measure for our purposes. (See Figure 1-1 on page 18)

The main advantage of the P.C.I. as a measure of concentration is the fact that it generates a number based, not on one or two of the constituent units, but on all of them. It can therefore overcome the anomalies of those measure suggested above that tend to use only one or two of the constituent units to generate a measure, with the obvious consequence that the ranking of federal systems will vary according to which one or two units are selected. By escaping the arbitrariness of such a selection process, the P.C.I. affords a more objective way of measuring concentration.

APPENDIX C

OTHER PROPOSALS FOR AN ELECTED SENATE

It is not our intention to claim an undue degree of originality in proposing an elected Senate as the most effective instrument for achieving regional representation. A number of public figures have made speeches or written articles briefly suggesting what an elected Senate should look like as a partial solution to our constitutional ills. To mention only a few recent examples:

— Senator Duff Roblin in a speech given in Calgary in April, 1980.

— J. P. Gallagher, of Dome Petroleum Ltd., in an address to the Toronto Board of Trade in January, 1981.

— Prof. Edward McWhinney of Simon Fraser University, in an article published in October, 1980.[13]

— Tom Kent, of Dalhousie University, in a speech at York University in April, 1981[14]

All begin by deploring the low state of the existing Senate, acknowledging the need for regional representation within the national legislature, and proposing an elected Senate as an appropriate way of achieving this goal in the democratic context of the twentieth century.

BASIS FOR REPRESENTATION

All the proposals assume that the basic unit for representation will be the province. Canadian Senators are to be elected on the basis of a single multi-member province-wide constituency. Dr. Gallagher suggests a Senate that is to be half elected, and half appointed by provincial governments; the other three proposals all consider a fully elected Senate.

It does not follow, however, that each province will elect the same number of Senators. Prof. McWhinney is not clear on this point, but both Dean Kent and Senator Roblin assume a Senate in which the distribution of representation will be much the same as in the existing Senate. For Senator Roblin, there is to be equality of representation by region, presumably paralleling the Divisions of Section 22 of the B.N.A. Act. For Dean Kent,

[13]E. McWhinney, "If We Keep a Senate, It Should Be Elected", in *Policy Options Politique*, Vol. 1 No. 3 (Sept./Oct. 1980), pp. 32-5.

[14]Tom Kent, "How to Enjoy Regional Diversities", The Walter L. Gordon Lecture Series 1980-81; York University, 6 April, 1981.

there is to be some kind of sliding scale loosely based on population, with the floor for provincial Senate representation being 4, and the two largest provinces having an equal number of Senators that total just under half of the total membership. Dr. Gallagher advocates "approximately equal" representation from all provinces, with minor weighting for the large provinces.

All the proposals assume that the election of several Senators within a single constituency at the same time will permit the use of a form of proportional representation. This would guarantee that any party receiving a significant share of the vote in the Senatorial election would gain representation. In the most practical terms, this would ensure that Liberal representation from western Canada, and Conservative representation from Quebec, would not dissipate in a fruitless mixture of second and third place finishes as in general elections to the Commons, but would instead take concrete form in a duly elected Senator. At its simplest, this would prevent a Senate from replicating the complete regionalization of party membership that so frustrates the Commons, even if the voting patterns in elections for that body were the same as for the Commons (although, of course, it cannot be taken for granted that people would vote the same way).

Prof. McWhinney and Senator Roblin allude to proportional representation without being specific as to the way this would be applied; the point could be significant, because there are a number of different ways in which a system of proportional representation can be devised, and they promote quite different values. For example, a party list system would leave it completely in the hands of the political party organization itself who would receive the party's first or second or whatever seat. There is little indication that the average Canadian voter is sufficiently party-ridden to find this an attractive alternative; nor, given the self-perpetuating weakness of the party organization in such regions, is there any guarantee that the individual so designated would be chosen for his potential effectiveness as a regional representative. Some species of proportional representation electoral systems presume that voters cast their vote for a party, and leave it to the party to take care of such details as actual legislative members. The Single Transferable Vote system, explicitly suggested by Dean Kent, would seem preferable.

The proposals mentioned completely box the compass on the question of the timing for these elections. Prof. McWhinney seems, by his suggestion of a Senatorial term equal to the life of two Parliaments, to be assuming that Senatorial elections take place at the same time as federal general elections. Senator Roblin feels that the election of Senators to reflect the regional interests of the electorate would be helped if these Senators were elected at the same time as provincial general elections. Dr. Gallagher and Dean Kent would favor fixed terms of six years (with Dr. Gallagher specifying overlapping terms, with one-half of the Senatorial seats becoming vacant at the end of any six-year period). There are of course advantages and disadvantages to each of these solutions. Senatorial elections coinciding with provincial elec-

tions would prevent voters from simply casting their vote for a Senator as part of the package with which they try to influence the party political orientation of the next national government. They would thus be encouraged to cast their vote on their considered choice for an effective regional representative; but the very conflation of electing a national Senator in the heat of a provincial campaign might reduce the extent to which national issues feature in the election process and thereby undermine the mandate of the Senator to speak for his electorate on such matters. Senatorial elections coinciding with national elections would ensure a focus on national issues in the choice of a regional representative, but at the expense of allowing a reaction to an existing or preferred national government to carry with it the voting for Senators. Fixed terms escape both these dilemmas, but at the cost of yet another set of elections; in any given six year period, every voter in Canada would be subjected to one or more provincial general elections, one or more national general elections, and one Senatorial election.

Both Dr. Gallagher and Prof. McWhinney have specified that a Senator should not be eligible to serve a second term.

POWERS OF AN ELECTED SENATE

Dr. Gallagher suggests that the Senate should be required to approve all legislation initiated in the Commons, which implies a full veto power. The other three proposals anticipate a Senate that would be elected, but weak. The most that would be permitted an elected Senate over the main run of national governmental business would be suspensive veto of from two (McWhinney) to six (Kent) months. The Senate would be specifically excluded from having even that limited authority over the budget or any financial measures; Prof. McWhinney would exclude it from having any say over emergency legislation, while Dean Kent would allow the Commons to override even a suspensive veto if it felt the need to be pressing enough. Only Senator Roblin thinks the emergency power sufficiently threatening to regional interests to permit a firmer role for an elected Senate.

Senator Roblin wants an elected Senate that will play a role on such matters as constitutional amendment, the use of the emergency power, the invoking of the declaratory power under Section 91(10)(c), the exercise of the federal spending power on matters in provincial jurisdiction, or the approval of treaties that affect provincial jurisdiction. Even here, however, the teeth of the Senate are carefully blunted in advance; it would take a two-thirds vote in the Senate to "compel the House of Commons to reconsider", language which falls far short of a solid veto and does not go far beyond a suspensive veto.

Both Senator Roblin and Prof. McWhinney want the Senate to play a part in approving federal nominations to some public offices; Prof. McWhinney's list is the most extensive, including Supreme Court Judges, ambassadors, deputy ministers, heads of crown corporations, the governor of the

Bank of Canada, and possibly even the Governor-General, although the consequences of a negative vote in the Senate on such a nomination would be only a one month suspensive veto.

All four of the proposals insist that the Senate could not defeat a government, and all suggest that Senators could be appointed to the federal cabinet.

PARTY POLITICS IN THE ELECTED SENATE

The variety of the timings proposed for the election of Senators makes it difficult at first glance to appraise the impact that party politics would have upon its operations. Senatorial elections that would take place at the same time as national general elections would almost certainly ensure that the candidates for election to the Senate would include candidates from all of the major national parties, and that their campaign would be part of that party's electoral effort in the region. Senatorial elections that took place at fixed intervals would seem less clearly reserved to the monopoly of national parties and might encourage the entry of a wider range of partisan candidates. (It is easy, for example, to see a provincial separatist party testing its strength in such a contest.) Even here, the fact that it would be a *national* election fought on *national* issues would tend to narrow the selection to candidates from the national parties. Most problematic would be Senatorial elections corresponding with provincial general elections, especially in those provinces (such as British Columbia and Quebec) where the provincial party system has become quite different from the national party system. This third option is the most likely to draw into the Senate a wide variety of party political viewpoints from across the country. However, the speech suggesting this possibility goes on to laud an elected Senate as a reservoir of potential Cabinet representation, apparently presupposing that the national parties would dominate its membership.

Table C-1 shows the partisan composition of an elected Senate over the last two decades of Canadian politics, assuming a distribution of seats that parallels the present Senate, assuming that elections would take place at the

Table C-1: Party Composition of an Elected Senate Assuming Present Distribution of Seats

YEAR	LIBERAL	CONS.	CCF/NDP	OTHER
1953	53	34	11	6
1957	47	42	8	7
1958	37	58	8	1
1962	42	42	10	8
1963	46	38	10	10
1965	46	36	16	6
1968	47	38	15	4
1972	42	38	15	7
1974	49	34	14	7
1979	45	42	13	4
1980	51	37	15	1

same time as federal general elections, and assuming that people voted for candidates of the same party of Commons and Senate.

In recent decades, although the national government would almost always have the largest single group in the elected Senate, it would seldom have an absolute majority. An elected Senate that acted in a straightforward fashion as a party political house would therefore find itself in constant and dramatic conflict with the Commons and with the national government; of course, if an elected Senate permitted itself to become preoccupied with such party concerns it would already be failing in its duty of highlighting regional, rather than party political, concerns. In any event, the relatively minor powers conceded to the elected Senate would very much reduce any practical difficulties to the national government as a result of such Senatorial opposition.

OPERATIONS OF AN ELECTED SENATE

An elected Senate would be a legislative body that would function much as the present Senate or Commons, in that individual members would make and second motions, and then debate the merits of the question raised. Elected as individuals to represent the region for which they stood, each member of the Senate would have the duty of using the new chamber as a forum for the articulation of the concerns of that region. To the extent that members of the cabinet were drawn from the Senate, or could appear before it to defend national policies, regional spokesmen could confront national leaders directly with the regional impact or shortcomings of proposed legislation.

It is not clear in all the proposals how active a role the Senate is envisaged as performing in the legislative process. Prof. McWhinney argues that an elected Senate should have no power of initiating any legislation, but merely the capacity to react to the initiatives of the lower chamber. Dean Kent assumes strict time limits on Senate debates on national policy, in the interests of governmental efficiency and presumably established by the national government itself. Dean Kent's expectations for the effective aspect of Senate operations is perhaps implicit in his suggestion that all Parliamentary committees should be established as joint committees containing both MP's and Senators. At this level of practical detail away from formal publicity, as much as in the public eye through formal debates, the Senate is to promote regional sensitivity in national policies.

THE DRAWBACKS OF AN ELECTED SENATE

i. The weakness of the elected Senate in the proposals considered would mean that it was a toothless tiger that had been pressed into the service of regional representation. With no power at all over most national legislation, and only a suspensive veto over the remainder, it is difficult to see how the elected Senate could establish the leverage to be a credible guardian or

spokesman of regional interests. In the clearest possible way, these proposals contemplate an elected Senate as a means to regional *input*, rather than to regional *power*.

ii. In those proposals that address the subject directly, it is assumed that representation will depart considerably from the principle of equal representation for provinces, but will instead be skewed toward population either explicitly, or in the conventional terms of Canadian "regionalism". The less populated regions, already a small minority in the Commons, would again be a small minority in the elected Senate, making it an unlikely focus for the political discontent of a region.

iii. Lacking power, the Senate would be unable to attract the calibre of candidate who would lend credibility to its role as regional spokesman. The House of Commons and the provincial legislatures would be more attractive to individuals of competence and ambition than a body whose strongest action was to say "wait a while" to the national government.

iv. The real test of the effectiveness of an institution is not the wording of the constitutional provisions creating it, but the extent to which it serves the real political forces, needs and processes of the political system of which it is a part. An elected Senate as a spokesman of the regions could function successfully only if discontented groups in the regions saw it is a credible focus of their activities, and turned to it as a means to achieve their ends. The condition of the present Senate, with its very extensive formal powers, is an excellent example of this principle. In the absence of any power, it is unlikely that the Senate could draw the focus of regional political discontent away from such existing spokesmen as provincial premiers, who possess the double advantage of an autonomous jurisdiction and such public forums as First Ministers Conferences.

THE BENEFITS OF AN ELECTED SENATE

i. The first and obvious advantage of electing Senators is that they would have legitimacy and credibility as regional spokesmen, in a way that no appointed or delegated individual could possess legitimacy in a democratic era. Senators would be elected individuals selected to represent their region, with the clarity of mandate and of accountability that this implies.

ii. Election by a system of proportional representation would ensure the election of spokesmen of different political parties in each region. This would prevent the generation of an artificial impression of unanimity or political homogeneity within that region in its reaction to national policy initiatives, and would open the way for the articulation of political viewpoints that are presently screened out by the operations of the existing electoral system.

iii. The greater credibility of Senators because of their direct electoral mandate would have immediate and beneficial effects on their capacity to

fulfill their legislative role. In the modern era, the function of legislative bodies is less to initiate the details of legislation, than to respond to the initiative of the executive by scrutinizing the proposed measures and publicizing its significant and controversial aspects to the citizen body. The Senate cannot publicize dubious features of legislation if nobody is watching, and one of the reasons that no one is watching the present Senate is its lack of a credible and legitimate base, a defect that is not shared by an elected Senate.

Our intention in this task force report was to draw upon the benefits of these current proposals, and to improve upon what we see as their weakness. Table C-2 compares these proposals with our own. We acknowledge the extent to which our design of an elected Senate has benefited from a consideration of the proposals cited.

Table C-2: Comparison of Proposals for an Elected Senate

	McWHINNEY	KENT	ROBLIN	GALLAGHER	TASKFORCE
Senators:					
all elected	YES	YES	YES	NO	YES
half elected	NO	NO	NO	YES	NO
Timing of elections:					
fixed term	NO	YES	NO	YES	NO
provincial general election	NO	NO	YES	NO	NO
federal general election	YES	NO	NO	NO	YES
Representation:					
equal by province	YES	NO	NO	NO	YES
near-equal	NO	NO	NO	NO	NO
as present	NO	YES	YES	NO	NO
Proportional rep.	YES	YES	YES	?	YES
Transferable vote	?	YES	YES	?	?
Eligible for re-elect	NO	YES	YES	NO	YES
Senators in cabinet	YES	YES	YES	YES	NO
Powers of Senate:					
confidence questions	NO	NO	NO	NO	NO
suspensive veto	YES	YES	YES	NO	NO
near-equal powers	NO	NO	NO	YES	YES
ratify: treaties	YES	?	YES	?	NO
unilateral powers	NO	?	YES	?	YES
appointments:					
Supreme Court	YES	?	YES	?	NO
ambassadors	YES	?	YES	?	NO
nat'l boards	YES	?	YES	?	YES

SOURCES

Billington, Roy Allan, *Westward Expansion*, 3rd ed., New York, Macmillan 1969

Black, Edmund and Cairns, Alan C., "A Different Perspective on Canadian Federalism" in *Canadian Public Administration.*, Vol. IX, No. 1 (March, 1966)

Bothwell, Robert and Drummond, Ian and English, John, *Canada Since 1945: Power, Politics and Provincialism*, Toronto, University of Toronto Press, 1981

Briggs, E. D., "The Senate: Reform or Reconstruction?" in *Queen's Quarterly*, Vol. 75 (Spring 1978)

Burns, R. M., "Second Chambers: German Experience and Canadian Needs" in *Canadian Public Administration*, Vol. 18, No 4 (Winter 1975)

Cairns, Alan C., "The Electoral System and the Party System in Canada, 1921-1965", in *Canadian Journal of Political Science*, Vol. 1, No. 1, March, 1968

Campbell, Colin, *The Canadian Senate: A Lobby From Within*, Toronto, Macmillan, 1978

Carty, R. Kenneth and Ward, W. Peter, eds., *Entering the Eighties: Canada in Crisis*, Oxford University Press, Oxford, 1980

Forsey, Eugene, "Government Defeats in the Canadian House of Commons" in *Freedom and Order: Selected Essays*, Toronto, McClelland and Stewart, 1974

Gallagher, J. P., Chairman, Dome Petroleum Ltd., speech to the Toronto Board of Trade, January, 1981

Gibbins, Roger, *Prairie Politics and Society*, Toronto, Butterworths, 1979

Grasmuck, Sherri, "Ideology of Ethnoregionalism: The Case of Scotland" in *Politics and Society*, Vol. 9, No. 4, 1980

Hamelin, Louis-Edmond, (tr. Barr, William), *Canadian Nordicity: It's Your North, Too*, Montreal, Harvest Press, 1979

Joy, Richard J., *Languages in Conflict*, Toronto, McClelland and Stewart, 1972

Kent, Tom, "How to Enjoy Regional Diversities", The Walter L. Gordon Lecture Series 1980-81, York University, April 6, 1981

Lederman, W. R., "The Concurrent Operation of Federal and Provincial Laws in Canada" in *McGill Law Journal*. 1962-3

Livingston, W. S., "A Note on the Nature of Federalism" in *Canadian Federalism: Myth or Reality,* J. Peter Meekison, ed., 2nd ed., Toronto, Methuen, 1971.

Lyon, Peyton, "A new idea for Senate reform", in *Canadian Commentator,* July-August 1962

McWhinney, E., "If We Keep a Senate, It Should Be Elected", in *Policy Options Politique,* Vol. 1, No. 3, September/October 1980

Schwarz, John E., "Exploring a New Role in Policy-Making: The British House of Commons in the 1970s", in *The American Political Science Review,* Vol. 74, No. 1, March 1980

Simeon, Richard, "Regionalism and Canadian Political Institutions" in *Queen's Quarterly,* Vol. 82, Winter 1975

Smiley, Donald, "Reflection on Cultural Nationhood and Political Community in Canada" in *Entering the Eighties: Canada in Crisis,* R. Kenneth Carty and W. Peter Ward, eds., Oxford, Oxford University Press, 1980.

Smith, David P., "Parliament Innovates" in *Policy Options Politiques,* Vol. 2, No. 2, May/June 1981

Stein, Michael, "Federal Political Systems and Federal Societies" in *Canadian Federalism: Myth or Reality,* 2nd ed., J. Peter Meekison, ed., Toronto, Methuen, 1971

Watts, R. L., "Second Chambers in Federal Political Systems", in *The Confederation Challenge,* Vol. 2, Toronto; Queens Printer of Ontario, 1970

Wearing, Joseph, *The L-Shaped Party: The Liberal Party of Canada 1958-1980,* Toronto, McGraw-Hill Ryerson, 1981

Wilson, Barry, *Politics of Defeat: The Decline of the Liberal Party in Saskatchewan,* Saskatoon, Western Producer Prairie, 1980

CANADA WEST FOUNDATION PUBLICATIONS ON CONSTITUTIONAL ISSUES

Title	Number	Price
A Realistic Perspective of Canadian Confederation	CWF-77-1	$10.00
Alternatives: Towards the Development of an Effective Federal System for Canada	CWF-78-1	$ 5.00
A Follow-Up on Alternatives Canada Conference, Banff, March 27-29,1978	CWF-78-2	$ 2.00
A Summary of Colloquia on Constitutional Change, August 28-31, 1978	CWF-78-3	$ 2.00
Confederation 79 (A summary of views expressed at workshops, Spring, 1979)	CWF-79-1	$ 3.00
Electoral Reform: The Need is Pressing, The Time is Now	CWF-80-1	$ 4.00
Alternatives 1980: The Basic Issues in Constitutional Reform	CWF-80-2	$ 4.00
Citizens and Constitutions: a constituent assembly proposal	CWF-81-1	$ 2.50

*Prices subject to change.

MEMBERSHIP

The Canada West Foundation is supported by grants from the Western and Northern Governments, as well as from nation-wide corporate bodies, institutions, foundations, individuals, and membership fees.

Membership in the Foundation is encouraged. Active members of the Foundation are entitled to attend all general meetings of members, and to vote. Members receive a regular newsletter about Foundation activities.

The annual fee schedule is:

Individual, per year	**$ 25.00**
Corporations, Societies, Associations, per year	**$150.00**

The Canada West Foundation is small, competent, bold and ambitious. It is neither a closed organization nor exclusively for western and northern Canadians. It welcomes the support of everyone who desires the full partnership of strong, viable regions within the context of Confederation.